IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
DELPHI CORPORATION, et al.,	:	Case No. 05-44481 (RDD)
Debtors.	:	(Jointly Administered)

AFFIDAVIT OF SERVICE

I, Evan Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants, LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

On March 2, 2006, I caused to be served the documents listed below (i) upon the parties listed on Exhibit A hereto via overnight delivery, (ii) upon the parties listed on Exhibit B hereto via electronic notification, and (iii) upon the parties listed on Exhibit C hereto via postage pre-paid U.S. mail:

1) Debtor's Objection to the Motion of Appaloosa Management L.P. Pursuant to 11 U.S.C. Section 1102(A)(2) for Order Directing United States Trustee to Appoint Equity Committee (Docket No. 2629) [a copy of which is attached hereto as Exhibit D]

2) Declaration of John D. Sheehan in Support of Debtors' Objection to Motion of Appaloosa Management L.P. Pursuant to 11 U.S.C. Section 1102(a)(2) for Order Directing United States Trustee to Appoint Equity Committee (Docket No. 2630) [a copy of which is attached hereto as Exhibit E]

3) Debtors' Statement in Response to Motion Directing Appointment of General Motors Corporation to Statutory Creditors' Committee (Docket No. 2642) [a copy of which is attached hereto as Exhibit F]

Dated: March 3, 2006

/s/ Evan Gershbein
Evan Gershbein

Subscribed and sworn to (or affirmed) before me on this 3rd day of March, 2006, by Evan Gershbein, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature : */s/ Sarah Elizabeth Frankel*

Commission Expires: *12/23/08*

EXHIBIT A

Delphi Corporation
Master Service List

COMPANY	CONTACT	ADDRESS1	ADDRESS2	CITY	STATE	ZIP	PHONE	FAX	EMAIL	PARTY / FUNCTION
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Internal Revenue Service	Attn: Insolvency Department	477 Michigan Ave	Mail Stop 15	Detroit	MI	48226	313-628-3648	313-628-3602		Michigan IRS
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United States Trustee	Alicia M. Leonard	33 Whitehall Street	21st Floor	New York	NY	10004-2112	212-510-0500	212-668-2255 does not take service via fax		United States Trustee
United States Trustee	Deirdre A. Martini	33 Whitehall Street	Suite 2100	New York	NY	10004	212-510-0500	212-668-2256	deirdre.martini@usdoj.gov	United States Trustee
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EXHIBIT B

Delphi Corporation
Master Service List

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Curtis, Mallet-Prevost, Colt & mosle LLP	Steven J. Reisman	101 Park Avenue		New York	NY	10178-0061	2126966000	2126971559	sreisman@cm-p.com	Counsel for Flextronics International USA, Inc.
Davis Polk & Wardwell	Donald Bernstein	450 Lexington Avenue		New York	NY	10017	212-450-4092	212-450-3092	donald.bernstein@dpw.com	Postpetition Administrative Agent
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Groom Law Group	Lonie A. Hassel	1701 Pennsylvania Avenue, NW		Washington	DC	20006	202-857-0620	202-659-4503	lhassel@groom.com	Counsel for Employee Benefits
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
DELPHI CORPORATION, et al.,	:	Case No. 05-44481 (RDD)
Debtors.	:	(Jointly Administered)

DEBTORS' OBJECTION TO THE MOTION OF APPALOOSA MANAGEMENT L.P. PURSUANT TO 11 U.S.C. § 1102(A)(2) FOR ORDER DIRECTING UNITED STATES TRUSTEE TO APPOINT EQUITY COMMITTEE

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates, debtors and debtors-in-possession (collectively, the "Debtors"), hereby submit this objection (the "Objection")

to the Motion Of Appaloosa Management L.P. Pursuant To 11 U.S.C. § 1102(A)(2) For An Order Directing The United States Trustee To Appoint An Equity Committee In These Chapter 11 Cases (the "Motion") (Docket No. 1604), and the supporting declaration of John D. Sheehan, executed March 1, 2006 ("Sheehan Decl."), and respectfully represent as follows:

Preliminary Statement

1. Appaloosa Management L.P. ("Appaloosa") is a sophisticated financial institution that acquired all of its equity stake in Delphi at distressed prices in the few days after the Debtors filed their chapter 11 cases. (Appaloosa's Objections and Responses to Debtors' First Interrogatories and Documents Requests to Appaloosa Management L.P. ("Appaloosa's Discovery Responses" (a copy of which is attached hereto as Exhibit A)), Resp. to Interrog. No. 10.)

2. On November 7, 2005, Appaloosa submitted a written request (the "Letter Request") to the United States Trustee (the "U.S. Trustee") seeking the appointment an official equity committee. (Sheehan Decl. Ex. 1.) Shortly thereafter, the U.S. Trustee asked the Debtors for their position on Appaloosa's request. The Debtors and their advisors discussed the Letter Request with their Board of Directors on December 7, 2005, and with the Official Committee of Unsecured Creditors (the "Creditors' Committee") on December 9, 2005. (Sheehan Decl. ¶¶ 3-4.) As a result of those discussions, and after careful consideration, the Debtors determined that the formation of an equity committee in these cases was unwarranted at this time, and they so informed the U.S. Trustee and Appaloosa's counsel by letter dated December 19, 2005. (Id. ¶ 4 & Ex. 2.)

3. Apparently unwilling to await the U.S. Trustee's decision on Appaloosa's Letter Request, on December 22, 2005, Appaloosa filed the Motion to compel the U.S. Trustee to appoint an equity committee. On December 30, 2005, the U.S. Trustee filed a response to the

Motion (Docket No. 1682), which noted that the Motion was premature—given that the Debtors had not then even filed their schedules and statements—and that Appaloosa had also failed to present any evidence that an equity committee is necessary to adequately represent equity security holders' interests. (U.S. Trustee Response ¶¶ 16, 23-26.)

4. The Debtors propounded interrogatories and document requests to Appaloosa requiring it to identify and produce the evidence it has—if any—in support of its motion. Appaloosa responded to those discovery requests on February 21, 2006. (Appaloosa's Discovery Responses.)[1]

5. In a prior ruling on a motion for appointment of an equity committee, this Court has held that "[t]he threshold consideration . . . is whether there is sufficient equity in the estate to justify the cost and expense of a separate committee. . . . I note that . . . the movants"—not the Debtors—"have the burden of proof, and it is their burden to put on evidence establishing, among other things, whether there is real equity value here." (In re Loral Space & Comm'ns, Ltd., No. 03–41710 (RDD), Transcript of Dec. 2, 2003 Hearing ("Loral Hearing Tr."), at 129:4-16 (a copy of which is attached hereto as Exhibit B).)

6. So far, the only evidence that Appaloosa has identified—but which it has refused to produce—is a reference to a "preliminary recovery analysis" by Ronald Goldstein of Appaloosa, which Appaloosa says was "conducted . . . during the three months before Delphi filed for bankruptcy." (Appaloosa's Discovery Responses, Resp. to Interrog. Nos. 3 & 4 (emphasis added).) Appaloosa says that this "preliminary analysis" somehow "demonstrated" [sic] that "under certain [unidentified] circumstances Delphi has substantial equity value, based

[1] Appaloosa's "responsive" document production consists mainly of Delphi's own publicly-filed documents, two Forms 8–K filed by GM on October 8, 2005, disclosing an agreement entered between GM and Delphi Corporation on December 22, 1999, and a scattering of analyst reports apparently issued during the period between March 31, 2004 and March 9, 2005.

in part on Appaloosa's [undisclosed] proprietary forecasts of EBITDA and the [undisclosed] restructuring of certain [unidentified] employee benefit-related obligations." (Id.) This "analysis," however, is irrelevant to the question of whether, as circumstances exist today, there "is" sufficient equity in the estate to justify the costs of an equity committee. At most, it shows that, sometime during the three months before Delphi filed for bankruptcy, a single individual at Appaloosa—based upon a purported technique for forecasting EBITDA unique to Appaloosa and some personal views about how Debtors' employee-benefit obligations might be restructured—may then have thought that, in the event of a bankruptcy, Delphi's equity holders might ultimately recover something.

7. Although the Debtors have no obligation to prove a negative—namely, that common equity holders will not receive a meaningful recovery—that fact is hardly subject to reasonable dispute. The Debtors' schedules and statements, as amended (Docket Nos. 1854 and 1999) and the Debtors' monthly operating report for January 2005, filed on February 28, 2006 (Docket No. 2569), which reflect a shareholder deficit of approximately negative $6.4 billion, as well as the recent trading prices of Delphi's public securities all evidence the fact that equity stands no realistic chance of any recovery. (Sheehan Decl. ¶¶ 5-7 & Ex. 3.)

8. Appaloosa also cannot prove that whatever equity value that may exist in the estates is sufficient to justify the costs of an equity committee. In fact, Appaloosa acknowledges that it has given no thought to the question of costs, for its Discovery Responses admit that "at the present time, Appaloosa has not conducted an analysis concerning the cost of appointing an equity committee." (Appaloosa's Discovery Responses, Resp. to Interrog. No. 5.)

9. Appaloosa also cannot prove that an equity committee is necessary to adequately represent the interests of equity holders. Appaloosa has identified no evidence to

overcome the presumption that Delphi's Board of Directors (10 of the 12 of whom are independent (Sheehan Decl. ¶ 8)) and the Creditors' Committee already adequately protect the interests of all stakeholders in discharging their duties to maximize the enterprise value of the Debtors.

10. In its Discovery Responses, Appaloosa also effectively concedes that it does not even need an equity committee to protect its interests. Appaloosa admits that "is able to retain counsel to represent its interests in the Debtors' chapter 11 cases" (Appaloosa Discovery Responses, Resp. to Interrog. No. 8), and it acknowledges that it has communicated with four other large institutional holders of the Debtors' equity securities about the formation of a formal or informal equity committee. (Id., Resp. to Interrog. No. 9.)

11. Because Appaloosa cannot meet its burden on the threshold question of whether there is sufficient equity in the estates to justify the costs of an equity committee, much less to prove that the appointment of an equity committee is necessary to adequately represent the interests of equity holders, its Motion should be denied.

Argument

A. The Legal Standard For Appointing An Equity Committee

12. Section 1102(a)(2) of the Bankruptcy Code provides that:

> On request of a party in interest, the court may order the appointment of additional committees of … equity security holders if necessary to assure adequate representation of … equity security holders. The United State trustee shall appoint any such committee.

11 U.S.C. § 1102(a)(2). Because the statute provides that the court "may" appoint an equity committee "if necessary," this Court has considerable discretion in deciding on whether to create a statutory committee of equity holders. Id. (emphasis added); see also In re Johns-Manville Corp., 68 B.R. 155, 160 (S.D.N.Y. 1986) ("Congress' desire to protect shareholders in

reorganization proceedings was not strong enough, however, to mandate the creation of equity committees.").

13. Those who seek the appointment of an equity committee bear the burden of proof in demonstrating to the Court that it should exercise its discretionary authority to require one. In re Williams Commc'ns Group, Inc., 281 B.R. 216, 219 (Bankr. S.D.N.Y. 2002) (Lifland, B.J.). In determining whether the proponents of an equity committee have satisfied their heavy burden, courts in this District often take guidance from Judge Lifland's decision in In re Williams Communications, in which he concluded:

> The appointment of official equity committees should be the rare exception. Such committees should not be appointed unless equity holders establish that (i) there is a substantial likelihood that they will receive a meaningful distribution in the case under a strict application of the absolute priority rule, and (ii) they are unable to represent their interests in the bankruptcy case without an official committee. The second factor is critical because, in most cases, even those equity holders who do expect a distribution in the case can adequately represent their interest without an official committee and can seek compensation if they make a substantial contribution in the case.

Id. at p. 222.[2]

14. In In re Loral Space & Communications Ltd., Case No. 03-41710 (Bankr. S.D.N.Y. Dec. 2, 2003) (Drain, B.J.), this Court surveyed the decisions in this District and similarly ruled that he who seeks appointment of an equity committee must overcome "a rather high threshold" and that "the appointment of an equity committee is the exception rather than the rule." (Loral Hearing Tr. at 127, 130.) This Court also identified "the threshold" question—and one on which the movant has the burden of proof—as whether "there is sufficient equity in the estate to justify the cost and expense of a separate committee." (Id. at 128.) In Loral, this Court

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[2] In determining whether a debtor appears to be hopelessly insolvent, the Williams court further noted that no formal valuation is required. Instead, according to Williams, courts should reach "a practical conclusion, based on a confluence of factors," including, among others, an insolvent balance sheet, verified schedules of assets and liabilities showing an equity deficiency, and the trading value of public bonds. Williams, 281 B.R. at 221.

considered, with respect to that threshold question, "both the book value of the debtors, from their [publicly] filed SEC reporting, as well as the agreed upon range of trading prices" of securities. (Id. at 131.) While acknowledging that such measures of value are not perfect, this Court held that when "either method [leads] to such a substantial negative equity [ranging from negative $230 million to negative $620 million], I think it is clear to me that the debtors are insolvent as far as the common shareholders are concerned." (Id. at 132.) Based on that evidence, this Court concluded that "the gap is simply too large to justify the expense and disruption that an official committee of common shareholders would pose, given that the only trade off . . . would be di minimis recovery at this point by shareholders." (Id. at 132-33.)

B. The Debtors Are Hopelessly Insolvent And Equity Holders Cannot Expect A Meaningful Recovery

15. Although the Debtors wish it were otherwise, Appaloosa cannot demonstrate—and the Debtors cannot construct—a scenario in which the Debtors can be deemed solvent. This is largely because the claims associated with the Debtors' non-competitive U.S. legacy liabilities and burdensome U.S. labor agreements are generally direct claims against the U.S. parent holding company and are superior in priority to the interests of that entity's common shareholders.

16. That the Debtors are hopelessly insolvent is illustrated by the recently filed schedules and statements and the January monthly operating report. In particular, the January monthly operating report lists $13.8 billion in assets and $20.2 billion in liabilities, of which $17.5 billion are liabilities subject to compromise, resulting in a shareholder deficit of negative $6.4 billion. Included in the stockholder deficit analysis is the Debtors' interests in its non-Debtor subsidiaries.

17. The capital markets also consider Delphi Corporation hopelessly insolvent. As of February 21, 2006, all four tranches of Delphi Corporation's publicly-traded debt securities were trading at an implied recovery of between 53.0% and 55.8% of face value, Delphi Corporation's publicly-traded trust preferred securities were trading at an implied recovery of 24.0% of face value, and Delphi Corporation's common stock was trading at the close of business at $0.33. (Sheehan Decl. Ex. 3.)

18. Appaloosa has neither identified nor produced any evidence that equity stands a chance of a meaningful recovery. Instead, Appaloosa's Discovery Responses and its Motion point to matters occurring before the Debtors filed their petitions. But the price at which Delphi common stock traded prior to the bankruptcy filings and the fact that the Company declared a dividend in June 2005 are no evidence that, as things stand now, equity holders are likely to receive a meaningful recovery under a plan of reorganization. For Appaloosa, it is as if the collapse of the out-of-court consensual negotiations among Delphi, its unions, and General Motors and the Debtors' consequent bankruptcy filings had never occurred. Simply put, Appaloosa cannot dispute but that the Debtors are hopelessly insolvent today.

C. The Equity Holders' Interests Are Adequately Represented

19. Even when recovery by equity holders is likely—a situation not present here—no equity committee should be appointed unless the proponent of one proves that its rights would not otherwise be adequately represented. For example, in In re Kasper A.S.L., Ltd., Case No. 02-10497 (Bankr. S.D.N.Y.) (Gropper, B.J.), Judge Gropper held that even when recovery by equity holders was possible, the fact that the equity holders' interests were already adequately represented was enough, under the circumstances, to deny the appointment of an equity committee:

> In the cases at bar . . . the debtors' prospects have improved to the point that there may be value for equity. . . . . The real question is whether in these cases at this time, when it is not clear whether there will be any value for equity and, if so, what it will be, but there is a possibility, is a separate committee necessary to assure the equity holders adequate representation? The answer, in light of the facts of this matter, is clearly "no."

(Transcript of July 15, 2003 Hearing, a copy of which is attached hereto as Exhibit C, at 70-71.) The court's holding was based upon the safeguards in place ensuring that the interests of the equity holders would be adequately represented, including, inter alia, the debtors' "responsibility to equity holders" to maximize value of the estate. (Id. at 71-79.)

20. At the outset, here the Debtors and Delphi's twelve-member board of directors (ten of whom are independent, including two new directors elected recently), can be expected adequately to represent the interests of equity holders because they are charged with the fiduciary duty of maximizing the value of the estate for the benefit of all stakeholders. See In re Penick Pharm., Inc., 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (Lifland, B.J.) (finding that managers and employees of debtor-in-possession had same duties as chapter 11 trustee, i.e., to maximize value of estate and ensure that monies that flowed through estate were used for benefit of unsecured creditors and other interested parties). (Loral Haring Tr. at 132 ("There's no meaningful evidence . . . that management is somehow laying down on its job in . . . obtaining the most value possible for the debtors."); Kasper Hearing Tr. at 72-73, 76-77 (discussing duty of debtors to equity holders).)

21. So, too, the Creditors' Committee's actions can be counted on to benefit equity holders' interests, for the Committee also has a duty to maximize the total value of the estate for the benefit of all stakeholders. Williams, 281 B.R. at 221 ("A higher valuation is in both the Creditors' Committee and the shareholders interest."); see also In re Leap Wireless Int'l Inc., 295 B.R. 135, 139-40 (Bankr. S.D. Cal. 2003) ("The economic interests of the bondholders

and the shareholders appear to be the same—that is, to find the highest realistic value for the company. And it is the fiduciary duty of the [Creditors' Committee] to do so.").

22. Appaloosa also has nothing to rebut the presumption that the interests of equity holders are already adequately represented through the Debtors' Board of Directors and the Creditors' Committee. Although Appaloosa's Motion insinuates—apparently upon the basis of selective newspaper clippings—that General Motors will run roughshod over other stakeholders' interests, it has offered no admissible evidence to support these claims. GM has taken strong exception to Appaloosa's charges. (Response of General Motors Corp. to the Motion of Appaloosa Management L.P. Pursuant to 11 U.S.C. § 1102(a) for an Order Directing the United States Trustee to Appoint an Equity Committee in these Chapter 11 Cases (Docket No. 1712).) In fact, GM now says that the protection of its own interests requires it to be seated on the Creditors' Committee. (Motion for Order Directing Appointment of General Motors Corp. to the Statutory Creditors' Committee (Docket No. 2443).) Notwithstanding its innuendoes, Appaloosa can never prove that "management is hopelessly conflicted or somehow otherwise not properly conducting their fiduciary duties." (Loral Hearing Tr. at 134; see also GM Resp., dated Jan. 2, 2006.)

23. As a highly sophisticated financial institution which elected to purchase its equity position in Delphi after the Debtors sought reorganization relief, which has the wherewithal to retain sophisticated professionals to represent it in these cases, and which knows how to communicate with other significant equity holders on matters of common interest, Appaloosa hardly needs an equity committee to look after its interests. Here, just as in Williams, "those equity holders who do expect a distribution in a case can adequately represent their own interests without an official committee and can seek contribution if they make a substantial

contribution to the case." 281 B.R. at 223. What Appaloosa cannot prove, as it must, is that the interests of equity holders will not be adequately represented "without the formation of an official committee." Id.

D. The Costs Of An Official Equity Committee Are Substantial And Unwarranted

24. Appaloosa states that the costs of an official equity committee are not a significant factor because of the size of the Debtors' cases and because the fees of the equity committee's professionals are subject to the scrutiny of the parties and judicial review. (Motion. ¶¶ 43-45.) This narrow view may account for Appaloosa's failure to analyze the costs of appointing an equity committee. In any event, Appaloosa's argument ignores the fact that the costs attendant to an official equity committee include not only professional fees, but also additional administrative burdens imposed on the Debtors and the costs of delay. (Loral Hearing Tr. at 136 ("The cost and harm to the estate, which is both direct in terms of dollars [paid to an equity committee's professionals], as well as indirect in terms of dollars spent by other parties and potential delay outweigh the rather negligible benefits of additional representation, given my conclusion that the preferred holders have their own resources and their own reasons for protecting their interests actively in the case.").)

25. Finally, were an equity committee to be appointed here—especially one that includes Appaloosa—it can be expected that such a committee will do whatever it can to achieve a recovery (even in the form of a "gift") for otherwise out-of-the-money equity. That exercise will itself delay the process and increase the costs of administering these estates.

Memorandum Of Law

26. Because the legal points and authorities upon which this Objection relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) be deemed satisfied.

Conclusion

WHEREFORE, the Debtors respectfully request that this Court enter an order (a) denying Appaloosa's Motion and (b) granting the Debtors such other and further relief as is just.

Dated: New York, New York
March 2, 2006

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& FLOM LLP

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Attorneys for Delphi Corporation, et al.,
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Exhibit A

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11
Delphi Corporation, et al.	)	Case No. 05-44481
	)	Jointly Administered
Debtors.	)	

APPALOOSA'S OBJECTIONS AND RESPONSES TO DEBTORS' FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS TO APPALOOSA MANAGEMENT L.P.

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, made applicable by Rules 7026, 7033, 7034 and 7036 of the Federal Rules of Bankruptcy Procedure, Appaloosa Management L.P. ("Appaloosa"), collectively with and through certain of its affiliates, hereby serves these objections and responses to the Debtors' First Set of Interrogatories and Document Requests to Appaloosa Management L.P. served by Delphi Corporation ("Delphi") and its affiliated debtors and debtors in possession (collectively, with Delphi, the "Debtors").

GENERAL OBJECTIONS

1. Nothing herein shall be construed as an admission by Appaloosa regarding the competence, admissibility, and/or relevance of any document, or as an admission of the truth or accuracy of any characterization or document of any kind sought by the Debtors'

Discovery. Appaloosa reserves the right to challenge the competency, relevance, materiality, and admissibility of any documents Appaloosa identifies or produces in response to any request at trial of this or any other action, or at any subsequent proceeding, of this or of any other action.

2. Appaloosa object to the Definitions and Instructions in the Discovery Requests on the ground, and to the extent, that they attempt to impose upon Appaloosa obligations and requirements beyond the scope of the applicable federal procedural rules, including Federal Rule of Civil Procedure 33.

3. Appaloosa objects to the Interrogatories and the Definitions and Instructions in the Discovery Requests on the ground, and to the extent, that such requests seek materials that are privileged and protected from production under the attorney/client privilege, the work-product rule, or any other privilege or immunity from discovery.

4. Appaloosa objects to the Discovery Requests to the extent they seek discovery of information outside of Appaloosa's possession, custody or control.

RESPONSES AND SPECIFIC
OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO.1:

Identify every person you intend to call to testify at the hearing on the Motion and describe the subject matters about which they will testify.

RESPONSE:

Without waiving the foregoing general objections, Appaloosa has not yet determined what witnesses, if any, it will call to testify at the hearing on the Motion. Appaloosa intends to produce a list of testifying witnesses to the Debtors no later than five business days prior to the hearing, or when the Debtors produce a list of their testifying witnesses, whichever is later.

INTERROGATORY NO. 2:

Identify all documents you intend to offer in evidence or otherwise use at the hearing on the Motion.

RESPONSE:

Without waiving the foregoing general objection, Appaloosa has not yet determined which documents it will offer in evidence or otherwise use at the hearing on the Motion. Appaloosa intends to produce a list of those documents to the Debtors no later than five business days prior to the hearing, or when the Debtors produce a list of documents it will offer in evidence or otherwise use at the hearing on the Motion, whichever is later.

INTERROGATORY NO. 3:

Identify every analysis you have done concerning the solvency of Delphi Corporation, including the dates it was commenced and completed, the person(s) who performed it, the conclusions it reached, and the bases for those conclusions.

RESPONSE:

Without waiving the foregoing general objections, a preliminary recovery analysis was prepared by Ronald Goldstein of Appaloosa. Mr. Goldstein conducted that analysis during the three months before Delphi filed for bankruptcy. The analysis demonstrated that under certain circumstances Delphi has substantial equity value, based in part on Appaloosa's proprietary forecasts of EBITDA and the restructuring of certain employee benefit-related obligations.

INTERROGATORY NO. 4:

Identify every analysis you have done concerning the reorganization value of Delphi Corporation, including the dates it was commenced and completed, the person(s) who performed it, the conclusions it reached, and the bases for those conclusions.

RESPONSE:

Without waiving the foregoing general objections, a preliminary recovery analysis was prepared by Ronald Goldstein of Appaloosa. Mr. Goldstein conducted that analysis during the three months before Delphi filed for bankruptcy. The analysis demonstrated that under certain circumstances Delphi has substantial equity value, based in part on Appaloosa's proprietary forecasts of EBITDA and the restructuring of certain employee benefit-related obligations.

INTERROGATORY NO. 5:

Identify every analysis you have done concerning the cost of appointing an equity committee, including the dates it was commenced and completed, the person(s) who performed it, the conclusions it reached, and the bases for those conclusions.

RESPONSE:

Without waiving the foregoing general objections, at the present time, Appaloosa has not conducted an analysis concerning the cost of appointing an equity committee.

INTERROGATORY NO. 6:

Identify every equity-holder of the Debtor with whom you have communicated concerning the formation of either a formal or informal equity committee.

RESPONSE:

Without waiving the foregoing general objections, Appaloosa has communicated with the following equity holders concerning the formation of either a formal or informal equity committee:

Steve Lampe, Lampe, Conway & Co.

Joseph Thornton, Pardus Capital Management

Chris Wilson, Stonehill Capital Management LLC

DC Capital, LLC, through Schulte Roth & Zabel

INTERROGATORY No. 7:

Do you contend that there is a substantial likelihood that equity holders of Delphi Corporation will receive a meaningful distribution in these cases, taken into account a strict application of the absolute priority rule? If so, provide the complete basis for your contention, including the identity of documents concerning your contention and the identity of persons with knowledge of the facts concerning your contention.

RESPONSE:

Without waiving the foregoing general objections, yes. Please see the Motion and the exhibits thereto, and the responses to Interrogatory Numbers 1 and 2.

INTERROGATORY No. 8:

Do you contend that Appaloosa is unable to represent its interests in these bankruptcy cases, either individually or through an informal committee of equity holders? If so, provide the complete basis for your contention, including the identity of documents concerning your contention.

RESPONSE:

Without waiving the foregoing general objections, while Appaloosa is able to retain counsel to represent its interests in the Debtors' chapter 11 cases, as set forth in the Motion, any suggestion that individual equity holders acting on their own, without the imprimatur of official committee status, can otherwise participate meaningfully without disadvantage in any chapter 11 case of significant magnitude, no less one of this size and complexity, so obviously ignores the practical realities of bankruptcy practice as to be facially disingenuous. Absent official representation, equity holders will be effectively shut out of the process, through a practical lack of access to management and other necessary resources from the Debtors and/or through simple attrition, as evidenced by the fact that, as part of the "meet and confer" held on January 27, 2006, the Debtors indicated an unwillingness to share information that is necessary to protect shareholder interests.

INTERROGATORY No. 9:

Provide a summary (including the costs thereof and receipts therefrom) of trading or other acquisitions or dispositions, for the period January 1, 2004 through the present, in securities of the Debtor.

RESPONSE:

In addition to the foregoing general objections, Appaloosa objects to providing a summary (including the costs thereof and receipts therefrom) of trading or other acquisitions or dispositions, for the period January 1, 2004 through the present, in securities of the Debtor as such information is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY No. 10:

Provide a complete history of your trading or other acquisitions or dispositions in equity securities of the Debtors.

RESPONSE:

In addition to the foregoing general objections, Appaloosa stipulates that it purchased equity securities of the Debtors subsequent to the commencement of the Debtors' chapter 11 cases. The purchases were reported on the Form SC 13G filed with the Securities & Exchange Commission by Appaloosa on October 11, 2005. There have been no trades by Appaloosa in equity shares of the Debtors since the filing of the October 11, 2005 Form SC 13G.

INTERROGATORY No. 11:

Provide a complete history, for the period January 1, 2004, through the present, in your trading or other acquisitions or dispositions in claims against the Debtors.

RESPONSE:

In addition to the foregoing general objections, Appaloosa objects to providing a complete history, for the period January 1, 2004, through the present, in its trading or other acquisitions or dispositions in claims against the Debtors as such information is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSES AND SPECIFIC OBJECTIONS TO DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

All documents identified in response to the foregoing interrogatories.

RESPONSE:

Without waiving the foregoing general objections and pursuant to the "meet and confer" held on January 27, 2006, any documents responsive to Request No. 1 will be produced for inspection and copying.

DOCUMENT REQUEST NO. 2:

A copy of the direct testimony, declaration, or affidavit, including all exhibits, of each witness identified in response to the foregoing interrogatories.

RESPONSE:

Without waiving the foregoing general objections, Appaloosa did not identify any witnesses in the foregoing interrogatories because it has not yet determined what witnesses, if any, it will call to testify at the hearing on the Motion. Appaloosa will produce a copy of the direct testimony, declaration, or affidavit, including all exhibits, of each witness subsequently identified to the Debtors no later than five business days prior to the hearing on the Motion, or when the Debtors produce a copy of the direct testimony, declaration, or affidavit, including all exhibits, of each of their witnesses, whichever is later.

DOCUMENT REQUEST NO. 3:

All documents substantiating the contentions you make in or that otherwise support your Motion.

RESPONSE:

Without waiving the foregoing general objections and pursuant to the "meet and confer" held on January 27, 2006, any documents responsive to Request No. 3 will be produced for inspection and copying.

DOCUMENT REQUEST NO. 4:

Copies of your communications with other equity holders of the Debtors concerning the Debtors.

RESPONSE:

Without waiving the foregoing general objections and pursuant to the "meet and confer" held on January 27, 2006, any documents responsive to Request No. 4 will be produced for inspection and copying.

DOCUMENT REQUEST NO. 5:

Copies of your communications with other debt holders of the Debtors concerning the Debtors.

RESPONSE:

In addition to the foregoing general objections, Appaloosa objects to providing copies of its communications with other debt holders of the Debtors concerning the Debtors as such information is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence.

DOCUMENT REQUEST NO. 6:

Copies of your communications with other holders of claims against the Debtors concerning the Debtors.

RESPONSE:

Without waiving the foregoing general objections, Appaloosa objects to providing copies of its communications with other holders of claims against the Debtors concerning the Debtors as such information is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence.

DOCUMENT REQUEST NO. 7:

Documents substantiating your contention that you are not able to protect your own interests in these cases.

RESPONSE:

Without waiving the foregoing general objections and pursuant to the "meet and confer" held on January 27, 2006, any documents responsive to Request No. 7 will be produced for inspection and copying.

DOCUMENT REQUEST NO. 8:

All documents substantiating your contention that the Debtors do not appear to be hopelessly insolvent.

RESPONSE:

Without waiving the foregoing general objections and pursuant to the "meet and confer" held on January 27, 2006, any documents responsive to Request No. 8 will be produced for inspection and copying.

DOCUMENT REQUEST NO. 9

All documents upon which any of your expert witnesses intend to rely.

RESPONSE:

Without waiving the foregoing general objections, at the present time, Appaloosa has not yet determined the documents upon which its experts intend to rely. Appaloosa intends to produce a list of these documents to the Debtors no later than five business days prior to the hearing, or when the Debtors produce a list of the documents upon which their experts intend to rely, whichever is later.

DOCUMENT REQUEST NO. 10:

All documents you considered in purchasing or selling equity securities of Delphi Corporation during 2005.

RESPONSE:

Without waiving the foregoing general objections and pursuant to the "meet and confer" held on January 27, 2006, any documents responsive to Request No. 10 will be produced for inspection and copying.

DOCUMENT REQUEST NO. 11:

All documents you considered in purchasing or selling debt securities of Delphi Corporation during 2005.

RESPONSE:

Without waiving the foregoing general objections and pursuant to the "meet and confer" held on January 27, 2006, any documents responsive to Request No. 11 will be produced for inspection and copying.

DOCUMENT REQUEST NO. 12:

All documents you considered in purchasing or selling claims against the Debtors.

RESPONSE:

Without waiving the foregoing general objections and pursuant to the "meet and confer" held on January 27, 2006, any documents responsive to Request No. 12 will be produced for inspection and copying.

Dated: February 21, 2006

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COUNSEL TO APPALOOSA
MANAGEMENT L.P.

CERTIFICATE OF SERVICE

I certify that on this 21 day of February, 2006, the foregoing APPALOOSA'S OBJECTIONS AND RESPONSES TO DEBTORS' FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS TO APPALOOSA MANAGEMENT L.P. was sent by email and by overnight mail to the counsel for the Debtors.

By: /s/ Aileen Venes
Aileen Venes

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -x
In the Matter of

LORAL SPACE & COMMUNICATIONS LTD., et al.,	03-41710 (RDD), 03-41709 to 03-41728

Debtors.
- - - - - - - - - - - - - - - - - -x

December 2, 2003
10:15 a.m.

United States Custom House
One Bowling Green
New York, New York 10004

HEARING pursuant to matters listed on agenda.

B E F O R E:
HON. ROBERT D. DRAIN,
U.S. Bankruptcy Judge.

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LORAL SPACE & COMMUNICATIONS LTD.

PROCEEDINGS:

Please be seated. Have the parties all given their appearances?

MR. WOLFSON: Peter Wolfson and John Bicks from Sonnenschein Nath and Rosenthal for the preferred shareholders.

MR. YETNIKOFF: Michael Yetnikoff with Schiff Hardin and Waite for certain common shareholders of Loral Space and Communications, LTD.

THE COURT: If you've already given your appearances to the court reporter, that's fine.

I don't know which one of you wants to go first.

MR. YETNIKOFF: Good morning, your Honor. Michael Yetnikoff of Schiff Hardin and Waite on behalf of certain common shareholders of Loral Space and Communications Limited.

As the court recalls, I was here in September pursuing a motion to appoint an official equity security holders committee of Loral. At that time the motion was denied without prejudice by the court; and the court left the door open, as

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it were, in the event that the circumstances changed in a particular way, that is with regard to the Intelsat auction and the circumstances surrounding that.

In fact, circumstances have changed in a way that perhaps none of the parties foresaw at that time. What changed is that this company seems to have experienced a very unusual and significant turn around in the course of this Chapter 11. Back in September, the company was in some danger of ceasing to do business, at least with respect to the SS/L business. That situation has turned around rather dramatically. In September there was a pending potential for a sale of certain satellite of Intelsat, but by no means of certainty that sale now looks likely to close and for a price that is in 3 hundred million dollars in excess of the book value of assets being sold.

Moreover, since September, analyst's opinions have been promulgated to the effect that the entire industries is experiencing a turn around. Therefore this appears to be the relatively unusual case of a company turning around

almost 180 degrees during the course of a Chapter 11 bankruptcy due to changes in business circumstances. And we submit that those changes justify, that means they require appointment of an official shareholders' committee to represent the interests of common shareholders.

The Intelsat sale, which is the cornerstone of the company strategy, is expected to close. That sale will pay down all of the companies' secured debt. The book value of the assets sold, approximately 805 million dollars, as set forth in Loral's last form 10-Q. The value that the company has placed on the sale, 1.1 billion dollars, a 3 hundred million dollar premium over the book value of the assets. To the extent that book value is relevant, and to the extent that there was a book value solvency gap as posited by the creditors' committee, that 3 hundred million difference closes that gap to zero; and the 1.1 billion dollar value that the debtor has ascribed to the sale, as I said is in excess -- as I said, does not include the value of additional satellite orders that Intelsat and affiliates have placed.

There is another significant benefit

from the sale that removes the secured debt thereby giving this company significantly more options to with respect to exit financing and capital structure upon emergence; that is a major and perhaps underrated benefit. It is now a whole lot easier for the company to emerge with a plan that has a reasonably leveraged capital structure, and that's a tremendous benefit in my view.

Another important fact of the satellite sale is it appears to not only leave Loral with a high margin high growth markets outside of North America, as has been set forth in testimony before this court, but in addition with orbital slots that the company could use to place other satellites which it builds to serve the north American market as well, so there is a very reasonable scenario where this company could be completely reconstituted within a reasonable period of time to its former self with the difference of having paid out off all its secured debt.

Although book value, which is not determinative of solvency, there are a couple of arguments to be made, first of all with respect to the 3 hundred million dollars closure of the

solvencies gap. Second, the company, on November 26th, filed a schedule of assets and liabilities. And a simple reading of that schedule filed on November 26th shows that for the parent company, Loral Space and Communications Limited, assets of 2.6 billion dollars and liabilities at 1.5 billion dollars, that is simple transcribed from the finding that was made on the 26th of November. So, we've had analysis that I realize of course that there are consolidation issues with respect to that, but even on a very cursory analysis of the book value numbers, there appears to be no solvency gap, certainly the company is not hopelessly insolvent, and in fact appears to be quite solvent.

The second change of circumstances since September, is Loral's receipt for new satellite orders with options for a 5th satellite order. That will keep the SS/L business afloat, demonstrates that the SS/L business is an excellent business; Loral is one of the very very few suppliers of the state of the art satellites. Even in light of its financial difficulties, the markets have shown that they have enormous respect for the SS/L business and have placed significant orders,

and one will only expect that situation to improve as the expected turn around in the satellite industry begins to gather steam, Loral is very well positioned to take advantage of that.

The third change of circumstance is the recognition, as indicated in the public press reports, that this industry is, in fact, turning around. There is an expectation, for example, for additional demand for high definition television which would require additional satellites. And as I said, there are not very many competitors that Loral has as a viable vibrant business. And is simply a company that is not only on the verge, but in fact has begin its turn around.

The other circumstances surrounding this case, with one exception, haven't changed, and they all favor appointment of an official shareholders committee. Loral's common stock is still widely held, still actively traded. This is still a large and complex case, and Loral's common shareholders interests are still not adequately represented. Management has a fiduciary duty to all constituencies in this case, it has to engage in a juggling act between its creditors and its

shareholders, and also management has certain economic interests that are personal to the management members, non of which are congruent with the common shareholders interest. Moreover the shareholders cannot represent themselves. The individual shareholders are small, widely scattered, they don't have the funds to represent themselves, and moreover, they don't have the standing to represent themselves. And I think that's demonstrated by the fact that I, on behalf of the shareholders, requested under confidentiality agreement, to view certain projections that the company had apparently made, perhaps not final objections, I really don't know what status they are in. The company declined to provide that information. I submit that had an official shareholders committee been appointed, that information would certainly have been shared with an official shareholders committee, it was not shared with the individual shareholders. I'm simply pointing out the fact that individual shareholders don't have the status, don't have the ability to gain information, or to use it for that matter, in the same way as an official committee.

There simply is no substitute for official committee representation.

Finally, the one other surrounding circumstance that has changed is the fact that the company has announced that it does intend to present reasonably viable projections, circulate those to the creditors' committee, and begin the plan of reorganization or negotiating process within the next few weeks. And in order for shareholders to be fairly represented, this is the time to do it. The appointment process will no doubt take a few weeks, and by the time a committee is appointed, if the companies timetable is correct, the plan negotiations will be starting. So effectively, this is, while not quite the last minute, really the last best chance for shareholders to obtain a seat at the table.

In summary, this is an unusual case, an unusual case where the facts on the ground of business realities appear to have changed where the company is not hopelessly is insolvent as a matter of book value, and not hopelessly insolvent as a matter of its business case; a case where it does appear that there may well be significant value for

the common shareholders at the end of the day. And I would submit that the probability is significant enough to warrant the appointment of an official shareholders committee in this case, and to give the shareholders the chance to participate in this turn around to the extent economically justifies.

THE COURT: Let me ask you. The shareholders that you represent, are they still the shareholders that were listed on the schedule attached to your original motion?

MR. YETNIKOFF: That is correct.

THE COURT: And they constitute, what, about --

MR. YETNIKOFF: We have something in the order of 2 million shares.

THE COURT: And that's what percent of the total?

MR. YETNIKOFF: Something around five percent.

THE COURT: And what is your factual basis for saying that the stock is very widely held?

MR. YETNIKOFF: I have seen trading volumes on the publically available bulletin boards

that track that. I don't believe there's any contest about the fact that the company -- I believe that neither the company nor the U.S. Trustee nor the creditors committee has disputed that this common stock is widely held. There is an active message board for stockholders. So based on the fact that that assertion has not been controverted and the fact that the stock continues to trade as publically reported on the internet, I conclude that the stock does continue to be widely held.

THE COURT: What is your reaction to the point raised by Aspen Advisors that if a committee is appointed it should be weighted in favor of preferred shareholders and/or that there should be two committees?

MR. YETNIKOFF: My response is first, that we would have no objection to two committees.

THE COURT: Well, let's assume that there's one committee.

MR. YETNIKOFF: Assuming that there's one committee, my view is as follows: The common shareholders committee has an interest

completely aligned with the preferred shareholders in making sure that the preferred shareholders are paid in full their legal entitlements, because the common shareholders don't get a penny until the preferred shareholders are paid whatever they are in entitled to. So the common shareholders have a complete total incentive to pay the preferred shareholders every penny that they are entitled to. On the other hand, the preferred shareholders have an incentive to get themselves paid but have no incentive to have the valuing move down to common. So while the common shareholders can, I believe, fairly and completely protect the interests preferred shareholders, the preferred shareholders do not have the same incentive to protect the interest of common; moreover, I'm not sure whether or not the preferred stock is either widely held or actively traded, and that is another reason not to weight the committee towards appointment towards preferred shareholders. And finally, if the business does turn around and this turn around is real, it's not just a matter of a value split of one hundred million dollars or so or 2 hundred million dollars worth of preferred. If the company

turns around, it will be a radical turn around. The satellite, the FSS business is an extremely high margin business. And my belief is in fact if the value split is not going to be that close, it will either be of the business -- if this turn around isn't real and there is nothing left for preferred or common, or that it will go entirely through the preferred to the common. So I guess the summary of that point is that I don't think it's going to be a real close case, I believe it's going one way or the other, but that's just my belief.

THE COURT: Okay. Thank you.

MR. WOLFSON: Good morning, your Honor. Peter Wolfson for the preferred shareholders. Your Honor, this is my first appearance in this matter, and I would just like to briefly note a couple of points going down to the legal standards. I will try not to duplicate that which Mr. Yetnikoff has discussed.

We represent the preferred shareholders --

THE COURT: Can you I interrupt you for a second? When you say you represent the

preferred shareholders, you represent Aspen Advisors?

MR. WOLFSON: That's correct. We represent Aspen Advisors and there are, I believe, a few others that have hooked up with Aspen Advisors through our office -- I shouldn't say they hooked up with Aspen Advisors, but we are representing a number of preferred shareholders who in the aggregate hold 23 percent of the outstanding shares. There are approximately 4 and a half million shares outstanding having a liquidation preference with accrued and unpaid interest of approximately 237 million dollars. The 23 percent that we own represents that portion of 237 million, and I believe mathematically there is about 185 million dollars worth that is scattered among the public. These two series of preferred shares were also publically trading, do publically trade, still publically trade. We have been unable to -- other than the handful that we have found that have the more significant pieces, the balance of it, as far as we are able to ascertain, is widely scattered and held. We do not have the exact count, but no other larger shareholders appear, there are no five

percent shareholders that appear on public record. And again, as Mr. Yetnikoff indicated, nobody has disputed our contention that in fact it is publically held, widely scattered, and in fact, I think prior to -- if I'm not mistaken, prior to the filing of this petition, these securities were all listed on the New York Stock Exchange until they were dealers.

THE COURT: Okay.

MR. WOLFSON: As noted in the Johns-Manville case, although some shareholders may have resources to protect their own interests, unlike a committee, they don't have any fiduciary duties to the other shareholders, they don't really have adequate resources, they certainly don't have adequate stature to properly and fully represent the interest of shareholders in a case of this nature.

Where Section 1109, as everybody points out, gives individual shareholders and creditors the right to be heard, it does not give them the right to negotiate plans, it does not give them any of the other statutory rights, nor the obligations, nor fiduciary responsibilities that an

official committee gives them.

The debtor does have conflicting duties and obligations and loyalties to both creditors, employees, management, shareholders. And again, as noted in Johns-Manville citing the legislative history, the rationale in this sort of a situation for appointing an equity committee is due what Congress perceives as a natural tendency of the debtor to pass by large creditors at the expense of equity holders.

We've heard some comments earlier and in the earlier transcript with respect to the joint provisional liquidators, but those are fiduciaries, such as the trustee representing the estate, has sustained infirmities in the ability to represent just shareholders that a debtor has. And I would note that we have scanned the record numerous times and we have not yet seen that the joint liquidators who others would assert have the ability to represent shareholders, we don't even think that they have entered an appearance in this case; if they have, we missed it. But most importantly, I think it is fairly clear at this point, that the debtors are not hopelessly

insolvent, certainly in relationship to the preferred shareholders. I'm not going to address the solvency relative to the common, I'm going to leave that to Mr. Yetnikoff, but I would like to focus the court's attention on whether or not the preferred shareholders are in the money or hopelessly insolvent and out of the money.

And what I would like to do is first refer to the most current financial projection, the financial numbers that are obtained in the September 30th, 2003 form 10-Q that the debtor just recently filed, and just walk the court through a couple of pages of that SEC document to pointedly point out that the company, even on a book basis, is not hopelessly insolvent.

And if I might just hand the court... I have put yellow tabs on a couple of pages that I'm going to refer to, if I may approach, your Honor?

THE COURT: Sure.

MR. WOLFSON: We pulled this off of the SEC web site, and I would ask the court first to take a look at the financial information in part one. It shows up in the upper right-hand corner, I

believe the page numbers are page 4 of 112, that is the condensed consolidated balance sheets.

THE COURT: Right.

MR. WOLFSON: And if your Honor would look at that first, one thing to note is that good will was written off this balance sheet in December of 2002, so you do not see a line here for good will, and I'll point that out in a moment from another exhibit. You have a much more clean balance sheet than you normally would have as a consequence of that.

In looking at the balance sheet, we need to then make a couple of adjustments. And you can make a couple of adjustments very easily, and this company is clearly going to be based on a book solvency issue, solvent from the standpoint of the preferred shareholders.

If I might, I guess just for the sake of the record, if we could mark that Q as preferred shareholders Exhibit 1. And I would like to mark as Exhibit 2, just a demonstrative aid.

MR. ROTHMAN: Your Honor, we're going to object to this. We haven't had any notice of this. He's not here testifying as an expert --

THE COURT: Well, let me interrupt you. You're objecting to the second, this sheet, not the 10-Q?

MR. ROTHMAN: I'm objecting to the extent they are trying to put in evidence through the argument of a lawyer for one thing, and for another, we would have liked to have notice that they were going to do this kind of thing so that we could have prepared.

MR. WOLFSON: Well, your Honor I --

MR. ROTHMAN: I mean, we'll listen to what he says, but I also have doubts as to whether he is even competent.

MR. WOLFSON: Your Honor, these are the debtors' documents. These are SEC publically filed documents.

THE COURT: When you referred to these --

MR. WOLFSON: Well --

THE COURT: -- obviously the September 30 10-Q is -- this other document that you just handed up to me, what is this that?

MR. WOLFSON: I'm going to show you these this comes straight out of the 10-Q. These

are just numbers right out of the 10-Q just as a demonstrative aid. If you don't want to look at it --

THE COURT: So you are not seeking to introduce these, you are seeking it to walk through them?

MR. WOLFSON: I will ultimately seek to introduce the 10-Q, I don't need to introduce this separate documents that I've marked as Exhibit 2.

THE COURT: Well, until he tries to offer his expert testimony or somebody's expert time, I'll aware of your objection, but I'm happy to have him walk through the debtors' 10-Q.

MR. WOLFSON: Your Honor, if you start off, then, on, again, page four of the Exhibit 1, the September 30th 10-Q, you see that they show total assets of 2.454 billion approximately, and then further down on that page, they show a number of 2.901 billion liabilities subject to compromise. And on page five, it shows a negative shareholders deficit of 705 million 829.

I'm not quite sure that the 300 million dollar number that Mr. Yetnikoff was

referring to earlier I think was an earlier Q; however, let's just now see some adjustments that need to be made to that to show that in fact, even based on book value, the preferreds are in the money.

If you start off by taking a look, as Mr. Yetnikoff indicated, there is a sale of the -- to Intelsat of a billion -- it's actually a billion 75 million as I understand the proceeds. The sale was a billion 25, plus the additional 50 million, so a billion 75 million. And if you take a look at page 46 of this document, which is, I think, one of the last tabs that I put on your Honor's copy -- I'm sorry, on the upper right-hand corner, it's page 72 of 112; it's actually page 46 of the document itself.

In the third paragraph down, "the debtor states on October 20th the sellers held a bankruptcy court ordered auction," and continues, "the purchase price was increased from one billion to one billion 25 million." And then continuing after the parenthetical it says that the buyers are agreeing to pay an additional 50 million dollars at the closing, which is how you get to a billion 75

million.

The last sentence of that paragraph shows that the net book value of the satellites to be sold was approximately 805 million, and the other net assets sold of this group was approximately 9 million, so you have a 814 million dollars of net assets being carried on the balance sheet as an assets that have been sold for a billion 75 million. The difference between the billion 75 million and the 814 million, is actually a 261 million dollar gain on assets.

The second --

MR. BOTTER: Your Honor, I don't want to interrupt Mr. Wolfson's testimony, but I think the parenthetical is fairly important; first of all the deal has not yet closed, and there are certain purchase price adjustments which could be, in the context of this discussion, quite material. So I think that --

THE COURT: Well, you can raise that point later.

MR. BOTTER: Okay.

MR. WOLFSON: And we checked with the debtors counsel last night, your Honor, who

said that this more likely than not, they are very optimistic this is closing either this month or next; they know of no reason why it won't.

The next adjustment -- and that's the first adjustment that we show on what I marked as Exhibit 2, just to have it on a piece of paper and keep track of it. The next adjustment that we point out to your Honor is, if you take a look at what shows up at -- well, again, looking at page 4 of 112, we show the liability sub compromise; you start off with a number of 2.9 billion dollars. We then turn to look how that number was calculated, and if your Honor would turn to page 31 of 112, that is footnote 11 to the Q, you'll see that they have a list at the top on the notes adding up to the 2.901394 which matches liabilities subject to compromise noted earlier. The first number is debt obligations of 2.36 billion, approximately; that number is ascertained by looking at the earlier footnote, footnote 10, that shows up at page 28 of 112. And if your Honor would look at page 28, footnote 10, you'll see that included within the 2.236 starting off debt obligations, the second line item is accrued interest being deferred gain

on debt exchanges, that of 214 million 446 thousand; 446 thousand. That, your Honor, was when the debtor engaged in its debt exchange, they just had some, from a tax reason, this was just a deferred gain on that debt to the exchange, this was not debt to be paid --

MR. HUEBNER: Your Honor. I'm sorry, I think it's now time to consider this objection again. This is pure testimony about what is just a highly technical financial document. He's testifying plain and simple --

MR. WOLFSON: I'm just reading.

MR. HUEBNER: -- on what -- no, you are not reading.

MR. WOLFSON: I'm reading right out of the document.

MR. HUEBNER: Sir, would it be okay if I could finish my statement and then you could just help things if you need to. I would appreciate finishing.

Your Honor, he's characterizing certain line items in very specific financial ways and then arguing that they should be simply be deducted from a 10-Q. That is not a reading from a

10-Q. If they wanted to bring a financial witness to testify as to factual matter why certain line items should come out of the asset or liability, they should have done so. I think an additional representation that he was merely reading from the 10-Q, walking us through, is in fact is turning out to be more inaccurate as the moments pass.

MR. WOLFSON: Your Honor, it says accrued interest, parenthetical, deferred gain on debt exchanges, close parenthetical, and you can search the schedules until the cows come home, you will never find this 214 million listed anywhere by the debtor as a debt that would have to be paid on confirmation. So you take the two publically filed documents together and it's very clear. And, you know, if the committee -- the committee had put in numerous papers identifying what the capital structure is of this case. They've always identified their debt. There is nothing that has ever indicated that this is debt that is represented by their committee that would have to be paid, and in fact it just simply is not, and they know it. So that needs to come off of the 2.236, and that was one of the adjustments that we

made on my demonstrative of Exhibit 2.

MR. ROTHMAN: Your Honor, we do renew the objection, he's not an expert.

THE COURT: All right. I will just note that Mr. Wolfson has identified a number that he thinks should be deleted based on the note itself, and I'll read the note --

MR. ROTHMAN: Is he is lawyer.

THE COURT: -- I'll read the note and make up my own mind whether it's clear enough or not. It might be worth while to ask whether it appears on the schedules.

MR. WOLFSON: Finally, your Honor, if you turn back to footnote 11, what the debtor has now done, one of the changes that they made in how they report numbers is that they have included the obligations to the preferred stock as debt obligations, therefore it gets built into the 2.9 billion dollar number. And if you look at the last two items, you see the 187 million for six percent, series C, and the 36 some odd million for the 6 percent series D. And if you take a look about midway on that note 11, it shows accrued interest and preferred dividends of 40 million 432. The

actual interest is that's owed is approximately 17 million dollars. And when you add the interest to the approximately 220 million dollars of principal due on the preferred stock or the liquidation preference on the preferred stock, the total outstanding as of the petition date on the preferred stock is approximately 237 million dollars. So we back out that 237 million dollars from the reported shareholder deficit of 705 million. And when you back out just those three items, you end up with a positive book equity available for the preferred shareholders of approximately 6.6 million dollars.

The point of that exercise is to demonstrate that based upon the debtors own publically filed information, even based on book value of assets which we understand is not absolutely dispositive of the issue, but even based on its own book value, the company from the preferred standpoint is solvent for preferred shareholders. You do have another 230 billion dollars to go through to get to the common equity, but the preferred are already in the money on that basis. And I would contrast that situation -- keep

in mind that the debtor has never taken the position that the company was hopelessly insolvent. The creditors' committee and the U.S. Trustee have, but they have done that on only two basis, basis number one is book balance sheet. They said look at the book balance sheet. The company has 3 hundred million dollars of a negative net worth. They were using the older numbers too, it would actually be a little higher based on these newer numbers. They say maybe there are some off balance sheet items, which may be true, but I would also point out that there were probably off balance sheet assets. The company for example, has totally written off, as we understand from the financials, any interest in Global Star, which may actually have some value.

So ignoring off balance sheet --

MR. ROTHMAN: Your Honor, the same objection. It's getting worse --

MR. WOLFSON: This is public information.

MR. ROTHMAN: -- this person is now an expert on Global Star and the implications of that; it's absurd.

MR. WOLFSON: Well, your Honor, the creditors' committee has, and numerous other parties in interest, have very sophisticated, very high paid financial advisers, and not one of them has given you an affidavit that this company is hopelessly insolvent, and I find that very telling; the debtor has not said that they are hopelessly insolvent, and we're pointing out now that this was their argument, the creditor committees' argument was look at the book balance sheet, the book balance sheet show that they are insolvent. It's not the case.

The other argument that they make is that the public debt market is indicative of this company being insolvent, and they are saying that that is something we should learn something from. And I would like to address that point. I would like to hand to the court -- first, the committee has acknowledged that since the filing of this petition, the bonds have traded up. I don't think there's any dispute based on publically available information, that the Loral Orion 10 percent senior notes are presently trading somewhere around 75 cents, and the Loral 9 and a half percent senior

notes are trading at around 40 cents. And indeed if I may hand to the court just a chart, and this is just pulled out of Bloomberg. If I might. This just tracks, if I might mark this as Exhibit 3, it just tracks historical bond prices.

MR. ROTHMAN: Your Honor, we object and don't think it should be used for any purpose.

THE COURT: Well, does the -- the committee has given the bond prices as well, and I think everyone basically agrees on a range. Right?

MR. WOLFSON: I think that they do, but their financial advisors are in court today. They can testify if these numbers are wrong.

MR. BOTTER: Your Honor, the bond prices are what they are. We agree that as of yesterday, they were 75 cents on the Orion bonds and 42 cents on the LTD bonds. We think that shows insolvency.

THE COURT: Okay.

MR. WOLFSON: What I think it shows, though, your Honor --

THE COURT: Is there anything with this that you are trying to show beyond that?

MR. WOLFSON: Well, in connection

with -- yes. Now you have just the lawyer, he wants to show you what he thinks it means.

THE COURT: He's agreeing with you.

MR. WOLFSON: Well, that's good. He agrees with the numbers, but then he says he thinks that that means that it's insolvent and that that's indicative of an insolvency position.

But if I can hand one other exhibit to the court -- the final exhibit that I would just like to point out, and also just purely extracted from publically filed SEC information, is income statement and balance sheet information straight out of the companies SEC documents going back as far as 1999. And if Your, Honor were to look at the historical bond chart that I handed out, as of December of '01, if you were to take a look at the December '01 historical balance sheet which shows up on page 2 of that last handout; at that time the company was reporting, in 12/01, a shareholder positive equity of a billion 3, and the bonds were trading very close to where they are trading today. And for the debtor or the creditors' committee to argue that the bonds, where they are trading today are indicative of an insolvent company, doesn't

synchronize with the facts of how the bonds have traded in relationship to the book balance sheets of this case in the past.

MR. ROTHMAN: Your Honor.

MR. WOLFSON: And that's the only point I wish to make on that.

MR. ROTHMAN: Your Honor, I'll reiterate the objection. This is getting more tenuating with each document.

THE COURT: Well, if your point is that they have always traded at a discount over the last several years, the last two years.

MR. WOLFSON: Either that they've always traded at a discount and/or that there's -- you can't take a look at where the bond prices are today and say ah ha, the company is insolvent as a consequence of that; the bonds are trading the same as they did two or three years ago when the company was reporting a book value of a billion 3. It was no more insolvent then --

THE COURT: Well, that's a different point. It does get into the area of expert testimony.

MR. WOLFSON: I'm just asking the

court to look at it factually. I'm not making any particular opinion about it, it's just a fact. The fact is here's where the bonds are trading based on publically financial information, and here's what the balance sheets of the company were showing, and your Honor can draw your own conclusion as to what that means.

MR. BOTTER: Your Honor, can I ask a question as to these exhibits? Obviously there's been a lot of work put into them, and I just want to ask if Mr. Wolfson's firm has done all the work by itself or whether it has been assisted by a financial adviser. And I think it's relevant, because if it's been assisted by a financial advisor, than maybe that financial adviser ought to sit on the stand and inform the court that they are representatives of them, and not a financial advisory firm that's involved in this case, and in fact, they are in the courtroom right now, and if they have been involved in working with Mr. Wolfson's firm in preparation of this, I would think it will be appropriate, if Mr. Wolfson is attempting to testify about these exhibits, that we could examine the people that prepared them.

THE COURT: Well, first of all, what is the identification exhibits tracking historical bond prices from December '01 to November '03? Was that prepared by your firm or with the assistance of financial types?

MR. WOLFSON: May I for a second?

(Discussion off the Record.)

MR. WOLFSON: Your Honor, this was prepared by the assistance of Channon and Company, and as was what we've marked as Exhibit 4. I'm perfectly delighted to have --

THE COURT: Which one was that?

MR. WOLFSON: Exhibit 3 I marked as the historical bond price. Exhibit 4 was the historical income statement going back to 1998. Exhibit 2 was the demonstrative aid book value for preferreds, and Exhibit 1 was the 10-Q.

THE COURT: Are you seeking to have any of these introduced into evidence?

MR. WOLFSON: Well I would, I guess, I would like, if there's no dispute, to introduce all of them into evidence.

THE COURT: Well, there's clearly a dispute.

MR. WOLFSON: Then I will call Channon just to testify as to where these numbers come from.

THE COURT: No. If they are to be -- they can't testify as an expert without having been previously identified.

MR. WOLFSON: Your Honor, again, I'm not looking for any expert testimony. All these numbers are absolute extracts from the debtors financial statements, with the exception of the chart where there's no dispute, that this accurately reflects simply trading values --

THE COURT: Well, I don't know if that's --

MR. BOTTER: We have no idea, your Honor.

MR. HUEBNER: Your Honor --

THE COURT: -- that is in dispute, I think.

MR. WOLFSON: Right. Your Honor, that's why I would have Channon testify. But this is not expert testimony, this is just factual. Where did you get these numbers from and how did they get onto this piece of paper. I'm not asking

for any opinions, I'm not asking for anything, other than just if we need to have a source.

If the debtor is going to dispute, for example, starting with Exhibit Number 4, the if the debtor is going to dispute that these are an accurate excerpt or regurgitation of what's in their 10-Ks, then I can just put some on to testify and say I got the numbers from the 10-K. They are accurate, here they are. And if the debtor ultimately believes any of these numbers are wrong -- and I also have the 10-Ks with me from 2002 and 2001 which I can introduce into evidence.

THE COURT: That would probably obviate that issue.

MR. WOLFSON: Okay. Well, then let me --

THE COURT: Rather than dealing with a summary.

MR. WOLFSON: I can do that.

MR. HUEBNER: Your Honor --

THE COURT: Then I'll hear the response on Exhibit 3.

MR. HUEBNER: Your Honor, I think I would note as a matter of process, that perhaps,

you know, people are not aware that bankruptcy courts sort of function like regular federal courts. There was no exhibit list, there was no witness list; what we just found out, pursuant to the court's questioning, is that there is a shadow financial advisor that actually prepared what is, in essence, a small expert report that Mr. Wolfson is reading from.

The only note of surprise here, I think it's about as dramatic as one can get, well, actually, the financial advisors who prepared all these documents is in the court, and I'm happy to call them to the stand. I think that next time, if Mr. Wolfson would give the primary parties the courtesy of notice of his exhibits, factual and otherwise, we could have a proper hearing. I think for us to now sit here and compare the 2001 10-Ks, and like there are other documents that he doesn't even have enough copies of for the primary parties in this case, to see if the excerpts of the exhibit is even accurate, is simply grossly unfair. If this was to be an evidentiary hearing, one might have expected the courtesy to, and in fact the obligation to advise the court as well as the

parties, of the fact that facts were being introduced into evidence, which is normally is accompanied by affidavits and witnesses. Mr. Wolfson was very sort of interested in the fact that there were not financial participant affidavits in this case. It is his evidentiary verdict on his motion to make a factual record. The question of fact is best poised to him. Where is his financial witness with the advanced notice and the opportunity to depose. This is not a Cracker Jack hearing; this is a multi billion dollar case in which we have the right to process.

MR. BOTTER: Your Honor, I would just add that I believe the debtors about three days ago asked Mr. Bicks, who is Mr. Wolfson's colleague, whether in fact, they would have a witness at this hearing. He said no. Obviously Mr. Wolfson is appearing as his own witness. But I think that if they had been honest to the process here, I think they would have identified that in fact they were working with Channon, and they would have made Channon available for us to examine them on these exhibits that they are trying to get in through Mr. Wolfson's testimony.

MR. WOLFSON: Your Honor, we are not seeking to --

THE COURT: Just a second.

MR. ROTHMAN: Your Honor, maybe this will help. What I was going to suggest is why don't we just have him put in the 10-Ks if he wants, without the exhibits. I would like to hear the rest of what he has to say because I don't think any of it makes a difference anyway.

THE COURT: Again, you are not seeking to introduce any valuation or expert testimony, you are just trying to corroborate the source that are for this document, Exhibit 3?.

MR. WOLFSON: That is what I'm --

THE COURT: Is that what you are trying to do?

MR. WOLFSON: I'm just trying to corroborate -- the 10-Ks corroborate Exhibit 4.

THE COURT: Well, the 10-Ks.

MR. WOLFSON: The 10-Ks --

THE COURT: The debtor is not disputing that those are admissible, and they couldn't. So I think those could be admitted.

MR. BOTTER: In terms of the

historical bond prices, your Honor, there's nothing in the 10-Ks --

THE COURT: I understand. So I think the remaining issue is whether we could have someone --

MR. HUEBNER: Your Honor, on the bond prices, to make it easy, I don't think there's a big dispute about the bond prices. I think that we all sort of brought different sheets that say the same thing; we all understand the that the Orion bonds are currently at 75. We all understand that the parent bonds are at 39 or 40 or 41. So unless the chart showing the trend up, which we can probably all agree as a general matter, that the announcement of the Intelsat sale and these orders has resulted in something of a trend upward, and in fact the trend recently shows that the prices have recently gone back down, but I'm not sure he needs the chart because I'm not sure that we fundamentally disagree that the bonds on the chart have gone like this (indicating).

THE COURT: I think his only point on the chart is that the bonds did not start trading at a discount county with the petitioner

date, that in fact they were trading at a discount at least as of December 2001. Now this isn't, as Judge Lifland said, anything more than helpful information in the first place. So I don't know whether that's a big point for the objectants to these motion to dispute or whether it's something that they can also agree to, whether the discount was five percent or 10 percent or 15 percent, that there was a period before the petition date where the bonds were trading at a discount.

MR. HUEBNER: Your Honor, again, just to make life procedurally simple for people, at least the agent, I think, has no objection to him sort of testifying as to the proposition that the market understood that even before the actual petition date, that these bonds might not be paid in full, and that there was some discount. Obviously we can't verify right now the 12/21/01 trading price. But if the proposition is just that the market got the fact that there was financial distress and the telecom bumper was exploding, which preceding the petition date, I'm not sure we have to have a factual argument, obviously people understand that.

THE COURT: Okay. So why don't we introduce then the -- is it three 10-Qs?

MR. WOLFSON: It's three 10-Qs bound together in one binder, the 2000, 2001 and 2002 10-K, and then I would like to mark that then perhaps as Exhibit 5.

THE COURT: You are seeking to introduce that, right?

MR. WOLFSON: Correct.

THE COURT: Why don't we introduce that as Exhibit 2. The other exhibit which is being introduced into evidence is the 2003 10 K.

MR. WOLFSON: Very well.

THE COURT: So that's the --

MR. WOLFSON: So Exhibit 2 is the 2003 10-Q?

THE COURT: Right. And Exhibit 2 is what you just handed me --

MR. WOLFSON: The three 10-Ks.

THE COURT: -- is the three 10-Ks. Okay.

MR. WOLFSON: In looking then, your Honor, at whether or not the company -- in looking at the requirement, or one of the tests for

determining whether or not it's appropriate to appoint an equity committee, is obviously one of the key tests is that the debtor is not hopelessly insolvent. And again I'm focusing on the preferred shareholders. And the point of this exercise was to take a look at the arguments that were being made. And again the debtor not focused the only parties that are asserting that the company is hopelessly insolvent is the creditors committee and the U.S. Trustee and both of them for that proposition relied solely on two things, one is the debtor it's publically reported book values and secondly the trading prices of the bonds. And I think that we've demonstrated that like go at the adjustments that need to be made to the debtors book values given the increased value from the sale, the attribution of liability on a gain, which it doesn't belong on that sort of an analysis for this purpose, and the just moving I the liability for the preferred stock out of the 705 million back above the line. That demonstrates then on a book basis the company has value 6 million dollars plus in value on a book basis for the preferred holders.

You might also -- the court may also

take note that just as the assets that were being carried at book value turned out to be less than their fair market value requiring an adjustment of a fairly significant number from eight hundred million to a billion 1 problem about a 30 percent adjustment the other assets being carried on the books may also be that much understated a further indicia of their not being not focused --

THE COURT: Or they may be overstated.

MR. WOLFSON: Excuse me.

THE COURT: Or they may be overstated.

MR. WOLFSON: Well, okay. But so far the only test that they we have of that is this first group of assets that was sold were apparently sold for a higher amount, and we then have a public statement and the statement made to this court in response to the EchoStar offer to buy all of the assets for the billion 8 something, that that was woefully inadequate. We take all that together and this case does not look anything like the Williams case it does not look anything like those cases where equity case committees are business Williams

bonds were trading 10 cents on the dollar the equity committee did not say you do not appear hopelessly insolvent there was a mere possibility that if they commenced all sorts if lawsuits and all sorts of subordination that may be at the end of the day we would be able to squeeze out some value and Judge Lifland said even if you equitably subordinate all of their claims, they are still senior to you equity holders and you might increase the bonds from 10 cents to 20 cents you still have a long way to go.

We are not coming to this court and say the way we get value ask by being -- commence go address I have litigation. We are suggesting on based on values buying ascribed on publically filed information in the fact that the debtor is not taking the position that this is hopelessly insolvent that based upon the courts experience in this case, that it's those financial attributes which demonstrate that they are not hopelessly insolvent. We don't have to get into litigation to go anywhere. The next element having gone through the first four is the timing of the request; and that clearly is -- this clearly is an appropriate

time. The debtor, as we understand it, has -- anticipates issuing a business plan in two to three weeks. It then intends to discuss that, go over that and begin plan negotiations premised upon that.

Now is the time for an equity committee have to very quickly perform whatever due diligence they need to do get up to speed and prepared to participate in those discussions understand the business plan participate in the negotiations for a plan. That will avoid any sort of delays as Judge Lifland noted if you wait too long you are hands cuffed and you are not going to be able to negotiate it all becomes a fate acomply and I point out absent the appointing of an equity committee, the committee a creditors' committee, if they hold true to this form they are going to come to the court and suggest to you at confirmation or perhaps prior -- couldn't do it prior thereto, they are going to suggest prior thereto that equity gets wiped out and you've got 250 million dollars, of 237 million dollars of preferred equity value, and then you've got 44 thousand dollar shares of outstanding of common equity. And if this court

gets in what is clearly at least a close case, if not a clear case where we are already in the money, it's at least a closed case. Before the court has to react to and opine on wiping out a group of equity holders both preferred and common, it would seem to me that having the bin met of the adversary process to really contest that would probably be extraordinarily helpful to the court and the parties to coming to any sort of conclusion.

I would also note your Honor that -- and as your Honor is I think aware from experience, we have done this before. We have represented my firm has represented and I in my earlier firms have represented equity committees before they make a vast difference from the in the outcome of a case. In Western Union we represent billions and billions of dollars negative net worth. Well as here, the industry turned, and things turned around, and low and behold the creditors were paid in full with interest and equity preserved their position in this case. Similarly in Hexcel, a case that we represented an equity committee, also a New York stock exchange company, pending out in San Francisco, it was before Judge Chichofski. There

too, the creditors took the position that it was hopelessly insolvent that we should not be given a committee much less lawyer been paid important for it lawyer for the committee. There too, by having an equity committee early enough we actually went out created a competitive environment we engaged financial advisors we had the assistance we did a rights offering, sponsored in part by some of the equity holders and paid in full plus interest and preserved eighty percent of the company for existing creditors. You cannot do that. You cannot fully and accurately and promptly represent equity holders if you do not have an official committee because nobody about will pay any attention to you the court will listen to us under 1109(b) but if we need to go out and effectively negotiate with the debtor similar alternatives and full ability to maximize value to the estate including to the shareholders as a matter of practical reality you can't do it without the statute afforded to you by having an official committee. The down side of the committee and there's only one down side to having a committee in a case where it's close and the creditors'

committee is already tell telling you get ready for a cram down and wipe out the only downside is a little bit of cost.

In absolute terms, it's a fair amount of the -- this is not an inexpensive case. We represent 237 million dollars worth of preferred shareholders in a liquidation preference. This is a classic billions of dollars of assets and liabilities. It is going to professional fees in an absolute term are substantial. I'm not going to deny that. But in relative terms it's nominal. It's nominal in terms of the investment we are trying to protect it's nominal in comparison to the amounts being spent by the debtors creditors' committee and the amounts being charged by the estate by the secured creditors one once the secured creditor are paid off in a few weeks the only thing between us and being crammed down is really the creditors' committee.

The creditors' committee is now going to be controlling the if shots. They will negotiate with the debtor. They will put pressure on the debtor to wipe us out. The debtor will possibly fight for a little bit of a warrant, an

out of money warrant, and that's it. That's a typical case. And I think the experience dictates that when you are this close and you have a preferred shareholder committee we will get a fair greater return without being litigious, unless necessary. You know, they can laugh all they want but we learned a long time ago and I don't get more business in these cases by just being the classic terrorist. Those days are over the days of just coming in and objecting don't get you anywhere you need to have an exostrategy. We are able to do that; we did it professionally we do it economically and economically and it works and gets value for the entire estate.

So we think, your Honor, in looking at the standards here and we recognize what the cases and such as Williams and others state. This case squarely falls in there an equity a committee certainly a committee ought to be appointed the key issue it's not insolvent I think that's been demonstrated and I think the cost issue is really normal to the interests that need to be protected here.

My final point is in response to

your Honor's inquiry to Mr. Yetnikoff. We believe what would be most appropriate here would be to have a separate equity holders committee, whether you appoint a common committee or not. If your Honor is only prepared to direct the appoint of a single committee and that single committee be a joint committee then we do believe, given they are that we are still 237 million dollar preference ahead of the common, that it should be on the basis that the majority of that committee be represented by preferred shareholders.

We are not prepared to leave our fate to the hands of common who have a lot more fighting to do to get into the money than we do. I think it's a very different dynamic when you are representing the way out way of common than the preferred shareholders and not fair to have a committee stacked with common and rely on them to get us paid.

THE COURT: What's your response to the point which I expect someone will make that if the cost really is nominal, given the amount at stake, that the new preferred shareholders who you represent would have roughly 25 percent of 237

million at stake, could pay for it themselves?
MR. WOLFSON: I was very careful to say it's nominal to relative terms, it's not necessarily nominal in absolute terms, it's many hundreds of thousands if not millions of dollars to represent a committee of this nature. There's no disputing this if I was to suggest to the court otherwise you wouldn't believe me. And for individual preferred shareholders to who risk a batter with the committee who is telling them you are out of the money you are getting wiped out for them to spend out of their own pocket a million dollars or so is a lot of money and not likely to happen.
On the other hand, it is normal relative to the says of this case the administrative expenses of this case and all the professional fees being paid out. The other problem in individuals again even more so than the than the money, the one thing that I have learned over the years of doing this is having the official stage which you are makes a deference, that is why these people don't want us to have the committee they are not fighting or objecting to us because

it's going to cost us a million dollars in fees that's not what it is about in a billion dollar case they don't want to let us have standing in this case because it gives the empowerment to do what needs to be done. For us to go out in and negotiate meaningfully in a represent all the preferred shareholders and being able to look at alternatives, you just need that official status. It's hard to quantity exclusive period how important that is; but it is truly very important.
THE COURT: At the hearing on exclusivity, the debtor, and I think you looked into this also, the debtor said they hoped to have the business plan as revised out to the parties in the next few weeks and get down to plan negotiation in the first quarter preferably January or February.
MR. WOLFSON: Correct, correct.
THE COURT: If a committee were ordered by me and certainly it would be appoint the and get organized over the next couple of weeks, when would the professionals for the committee in your view be ready to participate meaningful in negotiations.

MR. WOLFSON: On I think on that time table I think we should be able to. If a committee is able to be appointed mid December and he can select counsel mid December and start negotiations mid-January end of January we would be able to do that.
THE COURT: Has Channon done due diligence?
MR. WOLFSON: Your Honor I don't know that Channon -- I don't know if the commit exclusive period is going to select Channon. Not withstanding the colloquy here has at our request only done extracting information of from public document because they have spreadsheets. But my representation to the court would be this committee if we were representing the committee we are not going to seek a delay if we can get appointed and going forward promptly. We've handeled cases far larger in less time than this. But we think if we get up and running now by the time the business plan could you please out in the next couple of weeks, have meetings understand the business plan, we will be up and running without much problem.
And hopefully you know both the

debtor and the creditors committee, to the extent they can share information and help smooth the path and help an equity committee get up to speed, that too would be productive and help matters.
THE COURT: So Channon has not represented Aspen to date?
MR. WOLFSON: Correct.
THE COURT: Okay. Thank you.
MR. BOTTER: Your Honor, although I think both the debtors and credit first committee would both like to respond, I notice Mr. Christ who is in the court and may make sense to take off positive.
THE COURT: I agree. Mr. Christ if you can come up.
MR. CHRIST: Thank you.
I representing the stockholders protective committee, to correct debtor and creditors' responses. I don't know we were heard the first time because I don't think I filed it in the right time, but the judge allowed us to speak. So I guess this is the first time formally heard. We represent a little over one percent of the public shareholders. I had a conversation with Mr.

Herash who holds 10 percent, and he's told me I don't represent him, so I don't represent him. But I will say it's my belief that by inferences -- it goes without saying that we represent all the shareholders. And given the alternative of being extinguished, or the greater likelihood without representation, I can't imagine anyone, even the single shareholder from anyone, who wouldn't be represented here as a matter interest, even if they are unable to come physically here.

I came into town yesterday, I had a funeral actually yesterday. My aunt passed away in Brooklyn. She has had a row-house there since 1950, and we had to bury her, bring my mother up, it set her back. She was an immigrant that survived the Christian Holocaust, that predated the Jewish Holocaust by some 20 years.

They came over here. They were -- she was the last one in that group, in the mid up upper 80s, and they came over here for freedom. And freedom is vested in personal property. And unfortunately it left me with a car in Manhattan. And to be honest with you, I'm ambivalent, given the choice of finding my car or prevailing at this

hearing, I'm not sure which way I would go.

THE COURT: Well, to save you some time, you should assume I've read your papers, so you don't need to go over that ground.

MR. CHRIST: I would like to thank Mr. Wolfson for his incitefulness of pulling things together a lot of things, and Mr. Yetnikoff and I were pointing at, and the third quarter Q was a little disturbing to me in other senses because the loss was twice what everyone expected. And I'm a bit still caught up with the point we're being convinced that the debtor is acting in my best interest, although the debtors response stated it less than no less than three times and the creditors stated once I think the creditors referred to Mr. Zahler's affidavit in which he stated he had a million and a half shares and I guess I keep going back to the potential conflicts and the shareholder wouldn't be an asset in this product process, is a million and a half shares is a lot of money by the executive committee and Loral, but it totals maybe 30 cents a share, roughly a half million dollars or less. And when the same committee, and I'm not sure it's exactly

is paying themselves five million, they can recoup that on a monthly basis.

So theoretically if we are just looking at dollars and cents you could say we will do I want to get the shares to go up or do I want to get paid a few more months there would be a conflict there it makes me a little uncomfortable and that's in addition in a to the other thing I've already cited all that could be released if I think if we are allowed some visibility including to see the sealed documents that were put into the court, because when you considered this consider miss this Q you just want to gag yourself when you see the results of the quarter, and you just wonder if they are concocting a plan that presumably has projected earnings and all these good things, why the shareholders can't have visibility to that.

Well -- and I was reading Barons on the way up here and Warren Buffet invested in a bankrupt company, apparently Sidel, and because it was a lack of projections, the judge -- it was apparently a Delaware bankruptcy, as of December 2nd, has allowed the stockholders and their attorney to put forth a plan in that proceeding,

and that's in this week's Barons, and that plan is scheduled to have been put forth tomorrow in Delaware in that proceeding. And it was over apparently the point that they were going to be able to use projections projected to help justify the value.

I imagine in the moment you'll hear from the debtors and the trustee hold the company is not hopelessly but at least still insolvent, and I flipped on this and I looked at the same Q a lot of times, and I keep going back and forth on this, and I have to -- I have to admit that I almost have been swayed the other way, I almost think that there may not be adequate equity. But I do know to have ownership involved in a process like this can't hurt it. And I called Tokyo a couple of times on my own, it won't go on in perpetuity of my own, but I talked to Sony Corp. and tried to get them over here. And I haven't seen anybody over here try to get some live people with substantial equity or half a billion or a billion dollars, and I think those kinds of efforts can only help whatever the end conclusion of this is.

So for those reasons and, I hope

Judge, I know it's a rare thing, but I hope it's a go you go along with it give us an equity plan.

THE COURT: Okay thank you. I'm going to take a five minute break.

(Recess taken.)

THE COURT: Please be seated.

MR. ROTHMAN: Good afternoon your Honor, Richard Rothman from while got and man for the debtors. I said a little earlier that I didn't think the opinions being voiced by Mr. Wolfson would make a difference, and I'll tell you why. What's most striking to me having listened to the presentations both what you heard and what you didn't hear; firstly all, there was no reference to what the statute actually says. Section 1102 -- 1102(a)(2) provides that the court may provide the appoint of additional committees if he is necessary to ensure adequate representation of equity go and present.

As Judge Gropper stressed in the Kasper decision last year the operative word is necessary to assure adequate representation which is necessary which applies a reject the strict

standard. He then went to on to say that the second operative word in the statute or term is adequate representation. He made clear as have the other courts that have looked at this issue that the burden to prove is on the moving parties to establish that a separate committee is required to provide adequate representation, page 69.

We have no burden to prove here. This is a fact intensive inquiry in which the moving parties had the burden to show that a separate committee with all of the costs and burdens that they bring along was necessary that it was required to assure adequate representation. They have put in no proof there's been a complete failure of proof on this motion. So when Mr. Wolfson to stand up and say he was dumbstruck by the fact that we didn't put in an affidavit, is somewhat bazaar. They didn't put in any cognizable evidence other than evidence which shows on its face that the company is insolvent: Kasper, in which the court refused to appoint a committee is consistent with the prior case law. And what that case law reflects is that where we are necessary, committees serve a purpose. But they also impose

significant cost. Monetary costs as well as burdens and impediment on the smooth operation of a bankrupt estate which is already difficult, particularly in a complex business such as this. That is why the law makes clear that equity committees are an exception a rare exception. Indeed if you listen to Mr. Wolfson even where it looks like everybody is way out of the money that you neither need an equity committee in every case, but that isn't the law it's clearly not the law.

Now, Mr. Wolfson said that the cost is nominal, in a relative sense, cost here would not be nominal in any sense, if you look at what the costs have been to date in a Chapter 11 proceeding which has been laden with litigation, and I'll come back to that later, you will see that the cost of adding a committee would be very substantial by any measure, not only because they would be involved in the various litigated motions and proceedings, but because each time they were to instigate something you would have an expediential inquiry as well as all the other parties who were being paid for by the debtors would have could become involves as well.

Now in their brief, the preferred shareholders cited to the Williams case when they purport to do tell the court what the standard was. And what they said and what the Williams case said is different from what you've heard today. What they said and what Williams said is that a committee should be appointed if the movants can show two things; one is that there is a "substantial likelihood that equity will receive a mink full distribution" not whether the debtors are merely hopelessly insolvent. If you were to ledge to the parties who spoke today, you would think that as soon as you find the that debtors are not hopelessly insolvent, Bingo, we appoint a committee but that's not what the law cited in their own brief says. The issue is whether or not they have carried their burden, their burden of proving that there's a substantial likelihood of a mining full recovery by equity. They haven't been put in one iota of proof in order to carry that burden, nor could they.

The second requirement is to show consistent with the statute that their interests are not adequately represented and that they are

unable to represent their interest in the bankruptcy without an official committee. Here, they haven't shown either branch. They haven't shown that there is a substantial likelihood of mining full recovery and they currently certainly haven't shown that their interests aren't adequately protected and that the management of this company is not fulfilling its duty to equity in order to look out for those interests. In fact, we heard nothing about management in this case, all we heard because was an advertisement for a law firm which has apparently done this before and tries to go around and get equity committee representation.

There is no group whatsoever that the interest of these shareholders in this case are not adequately represented. In fact, I would submit to you that if you look at their papers and listen to what they have said, they have in fact proved the opposite. They have proved and all their papers show is their interests have been and continue to be adequately protected. Why do I say that? They were here once before in September, and they claimed then that a committee was necessary to

represent their interests and then they filed a renewed motion and now we're here we a supplemental motion. So what is the proof that a committee should be appointed. Well, the main element of proof what from what I can tell, is that brought of the actions taken by the management of this company, including the Intelsat sale and including its success in obtaining orders and keeping this company intact and keeping employees on board at an extremely difficult time so that SS/L could hang in there and be in a position to move forward and fill the orders that because those actions of management.

This company is better off than it was three or four months ago and that the management of this company who is taken it from a position where it was on the bring of death to the point where they now say and with some merit, we're doing a lot better and the prospects for this company are much better. But all that they have shown is that the management of this company has done an excellent job in a way which has furthered the interests of equity. And put equity in a position where there just may be some recovery.

Now, as to the question of whether or not there is a substantial likelihood of refer recovery, I didn't hear anybody say that. I heard Mr. Yetnikoff said if the company turns around which would be a radical thing, then they would be in the money, we heard Mr. Wolfson talk about the book value, and incidentally, we were objecting to what we thought was testimony, and one of the things -- one of the reasons is whether a lawyer walks in and purports to take one number from page nine 23 and move it to page 23 and start adding and subtracting, who knows what's going on. But for example, he opined that the book gained on the sale of Intelsat assets I'm looking at one of his handouts is 261 million dollars. From what we can tell, he didn't factor in the expenses of the sale nor did he factor in the insurance proceeds. So, you know, without even looking, and again, we're not in a position here and I don't think we need to put on evidence here today, because as I've said before it's not our burden, but that's just based on two minutes of looking; what it shows is that the unless but forward by a lawyer is effective worthless and shouldn't be considered at all. All

we know it is clear that even if you take his opinion, it's wrong on its face number one. And even if you were to credit it completely, what it could you please out to on the bottom line is to say there would be a six million dollar positive number in terms of book value, at the same time that everybody acknowledged that book value is a good reflection of actual value and that wouldn't show anything approaching a substantial likelihood of a meaningful recovery on the kind of investment we are talking about here.

So on a first prong of the standard that they have put forward to this court, there has clearly be a failure to prove a substantial likelihood for a meaningful recovery.

THE COURT: Let me stop you there. Are the new orders that were described at the hearing on the sale on to Intelsat, are those reflected in the September 10-Q, the value of those new orders.

MR. ROTHMAN: I don't know your Honor. One second.

MR. BOTTER: Your Honor, I believe that they were entered into as of September 30th.

THE COURT: I didn't think so I just wanted to make sure.

MR. ROTHMAN: Your Honor, I don't think that anybody is disputing that this company is doing better. Indeed we are proud of it. We think, as I've said, that what they have shown which is true, that the management of this company has done an outstanding job an extraordinarily difficult market operating in a bankruptcy. Now, do we think that there's some hope of recovery for equity? Absolutely, and that is the goal of this management do we hope it's true are they working for that? Are they working tire Leslie for that? Absolutely. But were anybody is it here and say or stand here and say that there is a substantial likelihood at this point in time of a means full Referee? No. That was their burden and they haven't shown it. Moving to the second prong of this test.

THE COURT: I'm sorry, before you do that --

MR. ROTHMAN: Sure.

THE COURT: -- do the schedules reflect the roughly 214 million dollar liability

that Mr. Wolfson said should be ignored?

MR. ROTHMAN: I don't know your Honor. Again if we had some notice we would have had notice to all these questions. We just don't know. Let me move to the second wrong prong, because I believe that that should dispose of this in any event. Even if they had presented cognizable proof of a substantial likelihood of a meaningful recovery they failed to prove that the appointment of an of another committee is likely.

There is no proof that the management of this company has not fulfilled its duty to respect and seek to further the interests of equity here. They have not pointed to a single thing that was done over the course of the past six months or at any time which was contrary to the interests of equity they haven't put on a witness, they haven't put in a document, they have done nothing and again they have proved the opposite. They stood her and said we have a much better chance of recovering since you denied our motion than we did before.

THE COURT: What about their point that management, just as it has duties to

everybody, is not -- without criticizing management, it's not well situated to negotiate a plan on their behalf.

MR. ROTHMAN: I wanted to take that up specifically, because when you cut through it all that's really their only argument. From what I can tell, that is their argument because under the law you have what is called a duty to both shareholders and to creditors. You cannot adequately represent us -- well, that argument is wrong in several respects.

First of all it's wrong on the law and it doesn't make a lot of sense. If the law didn't contemplate that a debtor could fulfill its duty, a duty to both shareholders and creditors, it wouldn't impose it. That wouldn't be the law. It would say that that's an oxymoron. You can't serve two masters, and that's not what the law says. It says that the debtor has an obligation to the various constituencies of the debtors, including the creditors and the shareholders. And this is a perfect case where the debtors have religiously abided by and fulfilled that duty.

Their argument was made and

rejected, I should also add, in the Edison case. It was a decision, I'll give you the site your Honor by Chief Judge Robinson in Delaware 1996 WL Westlaw 53 4853, 1996. And it was precisely the argument that was made here which Judge Robinson rejected. I'll read you a little bit. Chief Judge Robinson said as follows: "The appellants argue that an equity committee is needed because there are 'inherent' conflicts of loyalty which render inside shareholders 'legally incapable' of representing the interests of public shareholders" and I'll omit the cite. "Appellants point to the fact that in a bankruptcy context, the directors owe a fiduciary duty not only to shareholders but also to creditors. Based on this assertion, appellants argue that the 'debtors management in this case or any other bankruptcy case as a matter of law cannot exclusively advocate for the interest of the shareholders, particularly as against creditors.' Next paragraph. While appellants may be correct in their observation that management cannot exclusively advocate interest exclusively advocate for the interest of the shareholders, the statutory focus at Section 1102(a)(2) is not

whether shareholders are exclusively represented, but whether there are 'adequately represented.' Until Congress recognizes that an inherent conflict of interest exist between management and public shareholders in a bankruptcy context that warrant the mandatory appointment of an equity committee, the statutory test remains adequate of representation to be determined on the facts of each case."

So that's the law. And if it were to the contrary, again you would have an equity committee in most cases, but it's not the law. The appointment of an equity committee is a rare exception which is to be ordered in the discretion of the court when the facts of a given case it is clear that the appoint of a committee is necessary as required to adequately protect the interests of equity. And so we turn back to the facts of this case and the evidence that has been presented by these movants in order to discharge their burden. And the answer is zero. No evidence.

Now, when I say no evidence, I mean they have identified no act taken by the debtor, they pointed to know interest in any evidence

recognizable way to show that management is not protecting or looking out their interests, and indeed as I've said, the evidence shows to the contrary, the evidence shows that they have effectively proved that management has advanced their interests. And in fact your Honor, you have seen Mr. Schwartz. You've heard him testify and you have seen and you have heard Mr. Zahler testify.

These people, are working with as much skill as anybody has in this industry to turn this company around. Their goal is not to simply pay off creditors and throw all of the equity down the tubes, including I might add their hone. Their goal is to fulfill their duty to creditors and to the equity holders and there has not been one iota of proof that that's not exactly what they have done and on that basis alone this motion should be concerned.

Now, I would also assert your Honor, that the appoint of an equity committee here will in all likelihood serve only to harm these estates, not only by creating a significant drain on the assets of the estates, and as I said before, that's

not just the money that they spend it's the money that they are going do cause others to have to spend with whatever activities they engage in. And we've seen that they are not shy. And in order to get a sense as to why this motion is misguided, I would suggest that we look back at the last few months and look at what's happened since you denied the motion the first time. As I said before, they claimed in September that an equity committee was necessary in order to protect their interest. Well what has happened since then? First of all, we had the Intelsat sale. What would they have added to that process other than --

THE COURT: All right. That's in the past. Let me ask you this question. Do you think it's practical to say that a committee can be appointed with the sole responsibility of participating in plan negotiations, not reviewing actions out of the ordinary course, not doing any of the other listed items that a committee may under 1103 of the Code do, but simply participating in plan negotiations.

MR. ROTHMAN: In other words they would have no role except and until plan

negotiations?

THE COURT: They would obviously will have to get up to speed and there would be some cost in that but I'm assuming it that it will be simply to insult takes with your investment advisers and your investment advisors to do their own analysis enable them to do an analyses of a plan that would be proposed by the debtors.

MR. ROTHMAN: Your Honor could I defer answering that to for a few minutes, I would like to consult before I do that. I think it's a significant question.

THE COURT: Okay.

MR. ROTHMAN: Okay. The --

THE COURT: Any way I understand, I understand Your, Honor point about the cost and the focus on what might have happened if a committee had been appointed up to date.

MR. ROTHMAN: Not just the cost.

THE COURT: Well, the delay the confusion.

MR. ROTHMAN: This is an extremely complicated business. It's complicated and difficult from a committee standpoint it's

complicated from a regular standpoint the for example, for instance if you who look at what happened in the APT situation. And by the way, if you want to get a sense of the costs; in the Intelsat litigation, the cost of the bank from what I understand were about eight hundred thousand dollars of cost to the committee, and I'm not saying this in a critical way, I'm just saying this is what life is like when the these types of situations occur, and here they have occurred more than once. The cost of the committee was something in the order after of a million dollars.

So for the equity holders to say oh well maybe we are talking about several hundred thousand dollars a million dollars. It's nonsense we are talking about millions of dollars and we are talking about the an ad added cost that would flow therefrom.

But going to the ATP situation what you've seen is there and see elsewhere is navigating through this regulatory environment in the context of a bankruptcy is difficult enough. So to add another cook in the kitchen to will make I that much more difficult, and beginning, what

they haven't proven other than the advertisement for Sonnenschein is they have anything substantial to add. And I the reason I say to look back is relevant is we haven't seen anything to date that they would have done or added that was different we haven't seen anything to date that has been done that hurt their interests.

Now, the Kasper case which I referred to earlier decided in July of this year, I think is instructive. Because there as here, the debtors started out as hopelessly insolvent and the situation improved. And a motion was made to appoint an equity committee just as here, in fact I think someone saying firms may have been involved. But there was no evidence there just as here that the debtors had ignored their duty to the equity holders.

And similarly, there are as here, the debtors -- the equity holders had failed to show, particularly the referred, that they needed a committee. And the judge pointed out that they were vocal and they could object to the plan when they were -- when the plan was proposed they could vote against it they could object to it, and as we

all know, under the Code Section 503(b), to the extent that they want to participate and they can show that they have added substantial value, they can obtain compensation.

One other thing, your Honor, and in is that I think the schedule that's been talked about for the plan negotiations is not quite as represented or asserted by the movants counsel. I understand that it's a little bit further down the line. Ms. Fife can talk about that. But, let's go now to the bottom line. They have completely failed to show that they have been hurt in any respect or that their interests haven't been attended to in any way by the denial of the last motion for by anything that's going on today. I don't mean that only lawyers arguments I mean evidence. There's a complete failure of proof on this motion.

Second, they couldn't point to any action that the management of this company has taken that was not a reasonable exercise of the judgment of this company, judgment of the management that under mind their interest in any way. In fact, they put in living color that the

management has furthered their interest. We would submit that there should be no equity committee at all, unless and until they can make a showing not only that there's a substantial likelihood of a meaningful recovery by equity that but that the management is not acting in the interest of equity consistent with their fiduciary duty and that they have something substantial to do that. They have not done that.

THE COURT: What about Mr. Yetnikoff, Mr. Yetnikoff's point, and Mr. Wolfson echoes it? The debtor and its professionals are just not going to talk to them and won't negotiate anything.

MR. ROTHMAN: What I would say to you to that is we will talk to them we will provide information in fact Ms. Fife had a dialogue with one of the movants counsel and I will say to you today that is something that we will do, and I think that is all they need.

MS. FIFE: Your Honor, if I may. I have a discussion with the attorneys for the preferred stockholders last night and agreed that subject to an appropriate confidentiality agreement

we would provide them with the business plan and in addition we would make management available to them to address any of their issues and concerns.

And in light of that I think the answer to your earlier question is it's not necessary to appoint a committee in order to have the preferred participate in the negotiations of the of a plan of reorganization. Because we are perfectly willing to do that with them individually and give them the information that's necessary in order to enable them to that. And if they do in fact create value and need the substantiation of 503(b), they would be awarded compensation from the estate.

THE COURT: Okay.

MR. ROTHMAN: I have nothing further.

MR. BOTTER: Good afternoon your Honor. David Botter, of Akin Gump Strauss Hauer and Feld on behalf of the official creditors' committee.

Your Honor, I was going to take a walk through some of the changed circumstances from two months ago to, today but I think we all know

what they are; the IntelSat sale happened, or an order approving the sale has been entered. The terms of increased value we are only talking about 25 million dollars of increased value from the auction of those assets. We also talked about or have heard a lot about the SS/L new contracts. And the committee has said on more than one occasion that those are good things, that those are happy events for these estates, but they're contracts, and they are contracts for the debtors to provide services. And we've heard about 25 million dollars times 3 with respect to the DIRECTV and PanAmSat contracts, but those are deposits, your Honor. They are just deposits. And we've heard that the contracts are commercially profitable contracts for the debtors. But that doesn't add hundreds of millions of dollars of value to the SS/L estate, they are just contracts for the debtors to produce something and there will be a profit margin associated with the debtors producing new satellites, but again, it's not hundreds of millions of dollars.

I think, your Honor, what we should do today is focus on the facts that are in the

record before this court today. There are publically filed documents. There are Ks and Qs that are going to be in the evidentiary record today. And if you look at those Ks and Qs, you will see that the debtors aren't solvent based upon those Ks and Qs.

And Mr. Wolfson, as we all probably like to think, has fairly good financial savvy. And as bankruptcy practitioner, I think, by hanging around all the banking firms, we all get to know a little bit about how to read a balance sheet and the ins and outs. But Mr. Wolfson can't testify as to facts today; he can only -- we can only take a look at the evidence that's properly in the record today. And if you look at the September Q, you see that these debtors are insolvent by a factor of 7 hundred million dollars.

Now it's true that Mr. Wolfson pointed out some issues on the liability side of the balance sheet, but your Honor I think stated before that there may be some things on the asset side of the balance sheet overstated too. If you look at the asset side of the balance sheet, we have 1.8 billion dollars of PP&E. We all know,

we've all seen assets of PP&E type assets being substantially overstated on balance sheet.

So while I can look at this balance sheet and point out some issues as well, at the end of the day I'm not going to testify, and your Honor can't consider what I'm saying as part of the evidentiary record. All your Honor really should be considering is that on the assets side of that balance sheet, which is on page 4 of 112, as Mr. Wolfson pointed out, you have 2.45 billion dollars of assets. On the liability side of the balance sheet, you have over 3 billion dollars of liabilities. To me that's insolvent. And that's the evidence that's in the record today.

And in fact, your Honor, that evidence was in the record in September when we considered the very same issue.

THE COURT: That does include the preferred -- you agree with that.

MR. BOTTER: Your Honor, if it's appropriate to deduct it out you get down to 2.9 billion dollars of liabilities, so you are talking about five hundred million dollars of insolvency and it's still substantial.

THE COURT: I'm sorry. Ultimately this isn't that important, but don't you get down to 2.6 something, doesn't it go down to from 2.9 you take away 225 million and you get down to 2.6.

MR. BOTTER: Your Honor, I thought that the number I had total liability was 3.56 billion -- I'm sorry your Honor, that's right that includes if you go to 2.9 you get to 2.6 still almost 2 hundred million dollars out of the money.

THE COURT: Okay.

MR. BOTTER: Your Honor even if you were to form an Intelsat sale and the assets, Mr. Yetnikoff says that the assets are 3 hundred million dollars off the book you are still out of the money. What is also in the record and I think your Honor we all agree that bond price are what they are and I think we all agree that the bond prices were 75 cents either yesterday or today, on the Orion bonds and 42 cents on the LTD bonds. If you add up those numbers, your Honor, you're talking about a total solvency gap of 321 million dollars. And I don't believe, that if you add up those numbers and take them into account post petition interests that would be required on 1.7

billion dollars of claims that come before the preferred and certainly come before the common.

Those are the facts that are in the record today. Mr. Wolfson, and Mr. Yetnikoff had have argued that the creditors committee is the only thing that stands in their way. And I think -- well, the creditors' committee is 7 members but we do represent 1.7 billion dollars of debt.

But I think that there is another person that stands in their way of the creditors committee cramming down a plan that's inappropriate over the objection of equity, and I think that's your Honor. If we were to come in and we were -- had a wonderful situation and that wonderful situation said that 1.7 billion dollars 6 unsecured claims were being paid in full with appropriate post petition interests and there was not one penny above those amounts which would probably be almost 2 billion dollars in interest, therefore common is entitled to nothing, I think your Honor would require that we satisfy -- we and the debtors satisfy our evidentiary burden of cramming down such a plan over the objections of equity. And

part of that evidentiary burden would be to demonstrate that in fact the value only justified the distributions to the creditors and nothing for the equity. And we would have to satisfy that burden, just like today the movants are supposed to satisfy their burden of proving the Williams standard that there's potential for meaningful distribution of cases.

And even if you consider and take what it's worth, Mr. Wolfson said about the balance sheet and I don't think it's fair to do that but even if you take what it's worth is 6 million dollars of excess value, I would think that Sonnenschein and Channon, or whomever they were to engage, could run through a big portion of the 6 million dollars fairly quickly. And it strikes me in a case of billions of dollars of claims that 6 million dollars, or whatever that came out to after you satisfy their professional fees, constitutes of meaningful distribution. But again, that 6 million dollars of potential recovery that's not the evidence before your Honor today, it's not just not there.

At the end of the day, I think your

Honor will be the ultimate arbiter of whether or not the committee of the unsecured creditors' estates can cram down a plan upon equity that is not fair and equitable. And I think that your Honor will take very seriously the valuation testimony, the appropriate valuation testimony that you'll hear at that point in time, and your Honor will be the ultimate protection for the evil deeds that the creditors' committee may do here.

I think that there's one other point I would like to make. Your Honor asked Mr. Rothman as to whether or not it would be practical or impractical to for an equity committee to be appointed with limited role of just plan negotiations. Your Honor, I have been with this case since July 24th, probably too many hours every single day, and I think it's fair to say that every single matter that that has occurred in these cases has or could effect, ultimately, plan negotiations. Let's just take for an example, we have a hearing on before your Honor on Thursday, I believe, with respect to a settlement of APT.

The APT settlement involves transponder space on T-18 satellite that is to be

launched in April. There is a question as to which debtor entity is going to own this transponder space. So if you were, for example, an Orion creditor and ultimately you think that you should own this transponder space, that's going to ultimately affect the value of the Orion estate when we talk about plan negotiation.

Similarly, if you are an SS/L creditor and you're getting the benefits potentially of this settlement, that also will affect the SS/L estate down the road. So I don't think it's going to be practical for us to separate a committee out to just deal with plan negotiations, because everything in this case affects plan negotiations. And I also think, your Honor, with the evidence before you, the committee should not be burdened, or the unsecured creditors should not be burdened with paying substantial fees of attorneys and investment bankers for equity which is based upon all of the evidence before you today, it's completely out of the ordinary. And I think, your Honor, the motion should be denied.

THE COURT: Okay.

MR. HUEBNER: Good morning, your

Honor. I'm Marshall Huebner the firm of Davis Polk and Wardwell on behalf of Bank of America as agent.

Your Honor I think it's very important at the as outset to separate out the preferred and the common. I think they are represented by different parties and they line up differently economically and I think each of their different motions need to be denied in for different reasons. And your Honor I would like to first talk start with the common in fact their own evidence the undisputed evidence shows a different financial situation.

Your Honor, looking at the values of the publically traded securities introduced by the movants, the common stock in this case is at a minimum 623 million dollars out of the many money based on the current marketplaces praise prices. 623 million dollars. That assumes no post petition interest which could in and of itself be hundreds of millions of dollars. To be clear, so that the numbers are in front of everybody, the parent bonds are trading at 39 and a half, there are 350 million dollars of those bonds; the debtor can sit on those bonds. The Orion bonds of which there is 7 hundred

million dollars are trading at 75 cents. So you take 25 percent which is missing, and you add those two numbers and you add -- that's 386 million which we'll talk about in a minute when we will talk about the preferreds. So at a minimum before you get to any equity of any kind, there is a 386 million dollar deficit based on current market values of what people are actually paying based on the value of the of this recovery. When you add in, as Mr. Wolfson testified, the 237 million dollars of liquidation preferred 386 plus 237 is 220 million dollars.

So in terms of the common your Honor, I think there is really no legitimate argument, even at facially legitimate argument that the common is anywhere near in the money, 623 million dollars is many multiples of most bankruptcy cases, and I think that's where the market is.

Now let's talk about book value for a minute, because the own two pieces of evidence we argument that are we have before us at all are the bond trading braces when which we all sort of agreed Dow Jones, Roiters interactive printout; we

although know those are ascertainable and agreed and the 10-Q that was handed up is the 10-Q. So what Mr. Wolfson told us based on his numbers is that the book value for preferred is 6 million dollars. Now it's, of course, curious after encouraging the court to take various deductions of his choosing if the to a number that just barely showed the preferred in the money. But let's take that just for a moment pay it as take it at not as a coincidence but truth and also at the moment take it at as evidence and not an appropriate surprise legal speculation. So what though shows 6 million and subtract 237 million and even based on York in the worlds most Pollyannish optimistic world, the common is still several hundred million dollars out of the money. Now your Honor actually ruled, you know you sort of issued an opinion on this stuff. You went on at the last hearing on this issue and your Honor in fact noted for the benefit of all parties and this is a page 65 of the transcript, book days basis in which normally shows a greater value than the Chapter 11 cases. So unsurprisingly, your Honor is exactly where your Honor knows that these cases are, which is the book

value deficit of 231 million dollars common, the real world deficit, based on what sophisticated players watching these actually put real money on the line for says they are 623 million dollars out of the loan money. So I think the estimate isn't even a facially legitimate argument they deserve a reason that's just a couple of reasons.

And just to highlight a couple very quickly your Honor the second thing that your Honor pointed out as people on this other table have indicated and in fact it's your Honor's view the 7 million dollars of legal fees and financial advisors fees, is really not -- that's not the way I you waive burden; that potentially the even more important burden is the burden on the process of having multiple people, and now I'll add a little bit to it, who don't have a real economic stake or a legitimate economic stake in the enterprise to being at the table. And so, your Honor, you know specifically that the indirect cost and burdens, which could be much more important than the direct cost and burdens, have to be weighed.

The third thing your Honor that you ruled is it's rare such a motion is granted and

that's that the movants have a Plaintiff's transcript error an a heavy error to give the committee that's at page 63. So you gave everybody fair warning and as the cases say in this district it's extraordinary, it's heavy burden fact rarely granted. So what facts what evidence did the equity proponents the common equity proponents bring to this court. Well, your Honor we didn't actually get up and have testifies with them because we they didn't testify as lawyers they didn't have testimony at all. Not a piece of evidence, not an exhibit introduced not an affidavit, not a witness. You told them plain and simple, it's rare, it's extraordinary, you have a very heavy evidentiary burden. All that's happened is that the Intelsat auction, which we don't -- frankly ended very quickly after EchoStar turned and left, gartered 25 million in addition. And Mr. Botter pointed out, and I'll advocate for the other side the court should take judicial notice of the fact that there are a couple of large dollar amount deposits made on new contracts. Not an asset there's an offsetting liability for those contracts. Who even knows if they are profitable

nobody has brought any evidence to say yes or no on these massive new contracts there's an 89 percent profit margin and 3 hundred million dollars of new value, there's nothing.

So the common equity, and we'll certainly move on in a moment, presents zero evidence, zero.zero zero evidence; didn't even try, in support of an extraordinary motion where it's their burden, that is rarely granted that you ruled on a month ago and told them what they would need to show. I won't cite the rest of the transcripts, I'm sure it was entered and I'm sure the court remembers it, but you actually talked about the kind of show stopping change in direction at the auction that would be necessary to have them come back and seek relief. None of that happened, the auction ended almost exactly as it had started, albeit a very small incremental addition to the purchase price. So that's a comment, because they are not the same, and I think they deserve the respect, I think, of being addressed separately.

Now there's the preferred. Let leave aside, just for a moment, because I think it's a pure question of law that's alleged in Mr.

Royter's testimony and attached in the exhibits as to whether the lack of evidence or the hidden expert problem presented to us by Mr. Wolfson's presentation isn't appropriate at all. Let's just look at what he said. What he said is look your Honor almost two years ago the market knew that this company was on the way down and was having serious financial difficulties. Almost two years ago, believe me, your Honor, here's my surprise exhibit, the bonds were trading below par, but the book value was still high. That's right. That proves as you already ruled, that book value is not a reliable indicator of value because it's an artificial thing that takes purchase price times depreciation and often has little relevance to real world values, that's why market values matter, because they show what a sophisticate informed the marketplace actually think this is actually worth. So unsurprisingly, what the chart actually proves is that the company's fortune is deteriorated, the market price of securities went down because the people acknowledged reality, and as good things have happened, market prices went up as there were dramatic exciting new development, market prices

went back up. That's exactly the point, market value matters a lot because in the capitalist world that we leave in, the market is presumed to be a fairly accurate indicator. So when the Intelsat sale was announced, the market prices of the bonds went up. I should know, your honor, because what the chart also shows, which is confirmed by Roiters, is that in the last month and a half the mark value of the securities has gone down by 78 million dollars. The prices that peaked in the excitement immediately in the aftermath of the Intelsat sale have gone down by 70 million dollars. So it should not for one minute be thought -- he wanted to focus you one part of this chart, but as you said, you don't need a history lesson, you're here to talk about the current situation in the future, the market is actually getting a little bit less optimistic about the fortunes of this company. 78 million dollars worth less optimistic since October 20th.

Your Honor, let's take a minute and actually look at his illustrious exhibit, because while non of us is prepared for, I think it's very important to give you an indication of the slight

of hand Mr. Wolfson engaged in in an attempt to demonstrate the preferred, which --

MR. WOLFSON: Your Honor, I'm going to object to the continued innuendos and inappropriate statements; slight of hand, advertising law firm.

THE COURT: I'm just taking it as rhetoric.

MR. ROTHMAN: Let me point out the gross inaccuracies in Mr. Wolfson's exhibit so it's clear, if one fairly looked at his numbers, they would in fact look like. Let's start with this first one, which again, none of us had any time to prepare for.

Mr. Wolfson represented to this court that the sale of Intelsat assets is 261 million dollars, and therefore that should simply be deducted and that yields the book value. Of course what he does he is he assumes lots of things which are inappropriate, and if he had put on a witness, the witness would have got the skewered. One, he assumes no purchase price adjustment, and I think the debtors told you that they are currently striking a purchase price adjustment in the 40 to

50 million dollar range. Poof, 6.617 million dollars is now negative 40 million.

Two, he assumes no closing costs of any kind. He took the gross number of the wire transfer by Intelsat and is simply deducting that from the debtors' balance sheet assuming no cost. In fact, the debtors' have projected the sale to be in 10s of millions of dollars. Poof, negative 44 million dollars is probably now negative 84 million. Three, he took the value of the lease, he added an asset to the balance sheet without putting in any corresponding liability. Like the satellite purchase contract, this isn't a lottery ticket that the debtors' found, this is a contractual relationship that they are entering into that is going to cost them a lot of money to perform.

So what seems like a 261 million deduct, is in fact probably more like a very small deduct. And what it clearly proves, even assuming everything else he says, is that even on a book value basis which is much higher, as he proved to us and this court already ruled, an actual basis the preferred are probably in the 10s, and probably still hundreds of millions of dollars still out of

the money. And that's without giving them the benefit of the doubt entirely, because I'm not sophisticated enough to know what he's talking about when he said, and, your Honor deduct 237 million, and your Honor deduct another 214 million, and if you do all those things and sort of hold it sideways and look at it through a prism, I'm in the money.

My apologies for the rhetoric, but I think it's sort of important to note when somebody sort of tells you, as Mr. Botter said, take column nine on page 63 and deduct it from page 72 and move it over and multiply it by page 41, there is something a lot more sophisticated going on, and the one that I do know about, which is the Intelsat sale, the number is nothing remotely likely representing to be, for reasons I think without even putting a financial advisor on the stand, is fairly obvious.

THE COURT: How much is the bank debt again?

MR. HUEBNER: It's about 59.8 million -- well, it might be 73.5 million, it depends on whose amortization you're using.

THE COURT: Thank you.

MR. HUEBNER: So, now let's talk about the other prong of the law, because there is sort of two requirements as I think we all agree, and we are all citing the same cases to your Honor, since I think the common is over 6 hundred million dollars and I don't think there's that much to focus on, the preferreds, you know, may be closer 2 hundred million out, maybe they are 250 million out, maybe they 300 million out, maybe they are 180, I don't know. I'm certainly not going to testify as their financial advisor. But there are two prongs for this extraordinary relief. One of them is substantial equity of a meaningful distribution which we already talked about, and that's a factual question that they bear a heavy burden on and need to put on evidence.

But the second prong, your Honor, is whether they are unable to represent their interests without an official committee. And here it's important to note that the preferred holders are totally different than the common holders. This isn't a law firm in a class action type way, of trying to find a bunch of individuals to sew

together to come in and get an assignment of something, this is three totally sophisticated financial players who own at a minimum 54.5 million dollars of liquidation preference of preferred stock.

These are not people who are unable to represent their interests without an official committee, this isn't the great defuse individual holders, these people paid hundreds, or a minimum of ten, but probably hundreds of millions of dollars for these securities. They are a small group of very sophisticated people familiar with these issues. They find their own counsel, the counsel finds financial advisers. These are the exact example of people who don't deserve an official committee. Why does a group of three sophisticated preferred holders who are probably out of the money deserve an official committee with all the extraordinary costs and burdens and invasions on the estate, any more than EchoStar deserves an official committee or trade creditors deserves an official committee.

I just think if you took look at the second prong, which also has to be satisfied, I

think it's fair to say that this small cadres of high roller preferred holders, are "unable to represent their interests without a committee representing them." They own 23 percent of it, that's a pretty slug.

I think it's also important to note, as was true the last time around, that the United States trustee, which is an official arm of the government, which is responsible for providing independent, thoughtful guidance in decision making of these issues, again noted that in light of the changed circumstances, they have carefully reviewed the request and all the of the available evidence and don't feel that the relief is appropriate. And certainly, your Honor, I think the case law has long since been clear, your Honor is not bound by the decisions made by the U.S. Trustee. But I think it's important to note that they don't have any of their own money on the line in this case, and they are not shy in this district or in any other district in supporting committees where they think it's appropriately. But they looked at it independently, and they think it is not appropriate.

Finally, your Honor, you asked a question of somebody, and I'll take the political eve of trying to answer it, whether the debtors have incentive for getting equity back from the money and are likely to do it on their own. From my perspective, and I may have slightly misphrased your question, but that's not going to happen without an official committee.

THE COURT: No, that wasn't it. I think the debtors have every incentive to maximize the value of the estate. I think they have been doing that. My question I think was answered by Mr. Rothman, which is when you get to the plan negotiations, how bonds the board and management adequately represent the shareholders in plan negotiations.

MR. HUEBNER: Your Honor, just for a minute, I have two answers. One is the law, which is, among other things, there's an important decision that was before Justice Cody in re Ferrerra, which again makes clear that the duty of the boards in a development sovereignty, and you heard a lot about this, as I'm sure you remember, at the sale hearing, is to maximize the value of

the enterprise. Even the very notion of a split duty is an inaccurate statement of the law of fiduciary duties in its own insolvency. What the debtors have done here is perfectly clear, which is to create as much value as possible. And obviously mathematically, the minute that expands, it should ask what is available and it goes to equity.

The second reason, your Honor, I think the debtors have every incentive to create value is, as I think we also noted in the last few weeks, although I think the problem is the dynamics have changed recently, these have been fairly litigious cases with a fair amount of unpleasantness. And my guess is that the debtors the management have lots of reasons to insure the dollar is maximized including ensuring that the appropriate value gets added and ensuring that the creditors' committee maintains their creditor status or paid off the by the equity status.

So at the end of the day, your Honor, I think for slightly different reasons, neither request is appropriate, when you look at the common, they are so many hundreds of millions of dollars out of the money, once you put the

preferred in front of them, it's actually unprecedented to say that they have any reasonable likelihood of a substantial recovery. No evidence, even Mr. Wolfson's evidence, suggests that they were within the three hundred million dollars of striking range, even in the newest proceed state of affairs.

As the preferred committee, again, I think in their own presentation, if you were to admit any of it into evidence, other than the 10-Qs that show the debtor is insolvent, absent Mr. Wolfson's modifications, show that they are also sever hundred million dollars out of the money, but as importantly, since their argument is 237 million dollars stronger than the issuance of substantial likelihood, is the second prong, which is they needed to show that they are unable to represent their interest without an official committee. And I think that given the debtors' representation that they have told them that if they sign a confidentiality agreement, that they will be provided with the information, given their incentive to get the preferreds back into the money and given the extreme sophistication of the clients

that Mr. Wolfson and his firm represent, I think this is the textbook cases of where the committee is not required.

MS. LANDSBAUM: Good afternoon, your Honor. Lauren Landsbaum of the U.S. Trustee's office. I'm not going to repeat the law or the facts that you've already heard, I'm just going to tell you the U.S. Trustee has fully and fairly considered the requests and both requests. As far as preferred shareholders go, we received the joinder without any notification; usually the process is that you write the U.S. Trustee a letter requesting a committee, and then you give the U.S. Trustee time to responds and give them time file a motion or stipulation that the preferred share holders have filed a joinder, and then about a month later, a couple weeks ago I did receive a letter formally requesting the appointment of a preferred shareholders committee.

The U.S. Trustee has not responded yet but I was told, I get almost phone calls from the preferred shareholders counsel indicating that they would have filed their own motion had they had time. And I find it disingenuous when I come to

this hearing today, and obviously they have had time to assemble a lot evidence and hired experts to then present evidence to the court. The evidence that the U.S. Trustee did fully and fairly consider shows that as of today the debtor is insolvent, and that there would be no return to equity and the up kick in business is not going to provide any return to equity. And based on the fact the U.S. Trustee believes the debtor is insolvent, and the fact that their shareholders, particularly the preferred shareholders, are ability to adequately represent themselves, the U.S. Trustee does not believe that an appoint of an equity committee is appropriate at this time. That does not mean that the U.S. trustee will not reconsider this upon new evidence that is presented, but as the case is now and the evidence is before your Honor, the U.S. Trustee believes the appoint of an equity committee is not appropriate at this time.

THE COURT: Okay.

MR. SOMERSTEIN: Good afternoon, your Honor. Mark Somerstein of Kelly Drye and Warren for HSBC Bank, USA indentured Trustee. Your

Honor, my client is the indentured trustee, and I'll note for the record that we join in the objections of the official committee of unsecured creditors. I don't think I need to belabor the record, but just to note my understanding of the case is really, in constituency with my client who represents what appears to be the equity here, and it's unfortunate but that seems to be the case.

MR. WOLFSON: May I just briefly respond?

THE COURT: Yes, briefly.

MR. WOLFSON: Your Honor, just a couple of points. First let me speak, counsel for the debtor kept referring to Kasper as the case in point. And I think Kasper is a case in point. In Kasper, we did see the appointment of an equity committee, the judge with the objections of the debts and the creditors' committee in that case denied it and then a few weeks later or a month or so later the U.S. trustee appointed a committee took six weeks to designate the members of that committee and the equity committee actually got appointed probably about weeks at most prior to the hearing on disclosure statement, so late in the

game that you couldn't really do anything meaningful. If there's going to be an equity committee appointed, it needs to be done at a timely manner not at the very last minute. Circumstances do change but our committee -- this is our first appearance requesting a committee, we were not here at the original filing by the equity committee; this is the first request by the preferreds for a committee, and I think that the lessons that one learns historically do demonstrate Kasper is a case in point where unfortunately and to save a couple of bucks I think they lost an awful lot of value for the preferred. I was confused also by the debtors comments by parties standing up saying there may be some recovery but at the same time immediately thereafter stating we have not demonstrated any likelihood ever substantial distribution individual shareholders are not capable and not usually, it's not economically viable for them to go out, hire financial advisers, spend hundreds of thousand of dollars trying to do a financial advisory analyses just to request the appointment of a committee. It's just not done.

I did consult with Channon last night, not as an expert witness, but just simply using their tools to consolidate information that I know that financial advisers can readily do and they can extract information from the SEC. They are not presenting testimony with respect to the values; what they are showing you is right out of the debtors' Qs and their Ks, what -- and factually what is going on in this case.

Congress did not say that in order to appoint an equity committee we have to show that management is bad, whether they are doing something inappropriate. We are glad this management is turning things around business-wise. The fact that they are doing it and improving things does not mean that you do not get a committee. The case law suggests that are you or are you not hopelessly insolvent that is the primary issues. And I don't think based on this record anyone can conclude that this entity is hopelessly insolvent. Now can management adequately represent the committee in or the equity holders in plan negotiations. Judge you've seen an awful lot of cases on both sides of the bench, and I think you understand the

realities. In this case if you take a look at their own 10-K and 10-Qs, they have reported no less than seven class actions filed by shareholders against the board members. These are the board members that are going to represent the --

THE COURT: Wasn't that Mr. Huebner's point? If they didn't have the normal incentive, they would have in incentive too?

MR. WOLFSON: No, your Honor. I think their incentive is going to be, and you will see this, is for an utter release for all the board members right in the plan. They are going to seek an extension of the 524(e) rule, and I guarantee you that officers and board members of this were are going to seek a complete and utter release at the same time the plan an all but going on wipe out the equity holders if the creditors get their way maybe have a token amount their warrants and come before you they are got not going to be able to adequately and properly and fully property the committee and equity holders. The management, we are talking about management, management is interested, and they have conflicts, Judge, they cannot look solely and represent our interests

while at the same time being expected to disregard their own. They are interested management in interested in their jobs going forward they are interested in equity in the reorganized equity and I think on that basis we are they are going to be seeking primary equity.

MR. ROTHMAN: Your Honor I object again he doesn't didn't put on any evidence about management of this company that was that would support any of this. All this is speculation by a lawyer; it has nothing to do with the case.

MR. WOLFSON: Judge, the problem and what counsel is suggesting, is a boot strapping possibility catch 22 argument. He doesn't want to seek to argue what common sense and experience can demonstrate, we should wait to see what's in the plan when it's way to late to seek the appointment of an equity committee. I don't know what plan they are going to propose, I admit that, but I think historically we can listen to their comments. He stands up and tells you there is no likelihood of substantial recovery for equity holders. What does that mean? And at the same time he tells you, well, were working real hard --

MR. ROTHMAN: Excuse me. That's not what I said. What I said quoted from their brief at page five which says the test is whether there is a substantial likelihood that equity will receive a meaningful distribution. That's what I said; that's what the law is.

MR. WOLFSON: And he said there is no substantial likelihood, that we haven't demonstrated it. He's not coming in here, this debtor. I would have a little more comfort if the debtor was coming in here and saying, hey we think there is going to be a substantial likelihood of some success and some distribution to equity holders. How come they are not saying that? They are not saying it's hopelessly insolvent, they are not saying that and yet at the same time they are saying we expect there will be, his quote, was there may be some recovery. Well if there's going to be some recovery for preferred shareholders, and since nobody has argued, other than the creditors' committee, and the banks are going to be getting paid in full and are gone in a couple of weeks, I don't really understand why they have a dog left in this fight.

MR. BOTTER: Did he call me a dog?

MR. WOLFSON: While you have a dog left in this fight.

Judge, we know how these large cases go; unless management is able to stand up here and advocate there's value and they are not seeking releases and be able to demonstrate the ability to represent bond holders this is why in a large case such as this with vast amount of shareholders out there this is the precise nature of the case in the real world that calls for a committee. Furthermore, it's interesting that counsel for the banks says look at the Martin value pay no attention to the book values that's all we have to go with right now since we don't have anybody that's opining on enterprise values going forward; you can't do that until you see the business plan. It would be a folly, there's no basis upon which you can do this at this point. But for counsel for the bank to get up and say I'm playing with mirrors here; you want to talk about inappropriate, that's inappropriate.

The language of a 10-Q and 10-K should be in English. It should be understandable

to an investor, and yes even to a bankruptcy lawyer; this one is pretty clear. It says we sold the value of the assets for a billion 25 million. It says a contract is being assumed by the purchaser for an additional 50 million dollars, it's assumed, it's gone; it's off the balance sheet. If there's a 10 15 percent adjustment that need to be made to these numbers, well, that belongs in the 10-Q. If they are not making those adjustments, and there's 40 or 50 million dollars of adjustments and 30 million dollars of expenses, that should be have been in the 10-Q for us normal people to understand.

THE COURT: Doesn't it alert people there may well be an adjustment?

MR. HUEBNER: In the parenthetical.

MR. WOLFSON: And it may be, but not 15 20 percent that they are suggesting. And even if that's the case, and I'm no not here to prove to you beyond a doubt that this company is solvent, that's not the standard. The standard is, is this things -- when you look at the cases, you look at Williams any of the cases in which is equity committee is being bend denied in those situations,

there is hopeless insolvency. There are billions of dollars of gaps in a public company between creditors, bond holders and equity. You look at any of the cases which that happens, its always enormous; it's never this type. It's bonds trading at five cents, at 10 cents on the dollar; not 75 cents or 42 cents. When it trades at 75 cents, as your Honor is probably aware, for the most part these are people buying the bonds in the secondary market; they are expecting 30 percent annual rates of return; it's never going to go above 75 percent, because it's just time is money. People are expecting this bond to pay in full. And that's what we are they are going to pay in order to get the 30 percent return, so this is reflecting payments in full, or pretty close to it, and the market is not always right. Why is the market? The market is right? If the market the right, then let's believer the preferred shareholders and common stock holders who are still putting some value on this today. They are no less intelligent than bond traders. Hard to explain how to that could be. So were if we are going to follow the market precisely my point is the market is not

necessarily a great indicia. my point is that for whatever reason, at a time in when this company was reporting book values of a billion 3, as contrasted to today where they are they are reporting, erroneously we believe, a 705 million in book value negative number, with a 2 billion spread, the bonds are at or about the same prices. So what can you gain from that? Is that indication that the market knows what they are talking about? I don't think so.

THE COURT: Is there evidence on the record of what the stock and preferred is trading at?

MR. WOLFSON: I don't believe -- I don't know that that's in the current 10-Ks or Qs your Honor but --

THE COURT: It wouldn't be.

MR. WOLFSON: But my understanding is that -- and there are probably people in the courtroom who know that answer, it's the common information. The common stock was trading about 30 cents a share.

MR. CHRIST: 33.

MR. WOLFSON: 33 cents a share. And

I believe that the preferred is trading at about a buck a share, but I'm not a hundred percent sure about that.

So your Honor what with the debtors admission that there may be some recovery with the fact of the matter that the board here and the management operating the company well, but when it comes down to plan negotiations, they are going to so have done conflicts. They are going to want the jobs; they want their releases; they want their incentive bonuses; they want their primary equity as an incentive to go forward. Creditors typically will give them that at the same time they are wiping out the equity holders.

My last comment, your Honor, is in response to the question with respect to the ability to limit the role of a committee. I don't recall seeing specific cases on that in the past although my recollection is that you pretty much either appoint a committee or you don't appoint a committee. But we certainly have indicate to do courts before and we would certainly represent to this court that we would not duplicate things. There are numerous. I agreed with Mr. Botter.

There are some things that go on in a case there impact plan and the exo strategies and an equity committee ought to be involved in those. But there are numerous other day-to-day matters that we defer to the creditors' committee where you do have a common interest, things such as motions to lift the automatic stay, issues with respect to the sale of normal assets that are not plan threatening. All of those sorts of things you take look at just make sure it's not a big issue you defer typically to the debtor, even when there's a creditors' committee. We are not looking to duplicate issues, and we do act responsibly. And realize that at the end of the day, we are subject to the court's ruling with respect to the fee application, and if we do something inappropriate and duplicative and unnecessary, it will be dealt with accordingly, and we look to avoid that sort of adverse fee hearing.

So, your Honor, we would request, just to conclude -- we believe that this is the appropriate case for a committee. We think we can add value to the case. My primary client, Aspen Advisors and we have two other that have joined in on this motion; they do hold in the aggregate of 23

percent, they are financial institutions. But on the other hand, they are not necessarily in a position to fully fund an appropriate representation of all of the preferred equity holders. And absent there being a preferred equity committee or an equity committee that they are on, there's no commitment on their part to act in a fiduciary responsibility, and there's no guarantee they are going to stick around to the end of the case. That is one of the primary benefits of an equity committee in that it has fiduciary duties to all, and it will see the case to the end. If there's not a committee and an individual shareholder decides to sell its position for whatever gain it can make, it may just do that. So I think it may be the aid to the court to have the benefit of a committee to test what will undoubtedly be the financial advisers coming to you and telling you what the prospective future value of this company hypothetically may be.

THE COURT: Okay.

MS. LANDSBAUM: Your Honor, I have two brief comments.

THE COURT: All right, very briefly.

MS. LANDSBAUM: Your Honor, just quickly. With respect to the release issue, Mr. Wolfson indicated in the real world the directors will get the broad releases. I think all of us know the U.S. Trustee does not allow those releases and will not allow them in this case. And second, with regard to Kasper Mr. Wolfson was right. An equity committee was appointed and the U.S. Trustee did agree; and it is just an example that the U.S. Trustee can be swayed if circumstances change and an equity committee is deemed appropriate. And in Kasper, circumstances did change subsequent to the hearing on the motion, such that an equity committee was appropriate. But it is not analogous to this situation.

THE COURT: Okay.

MR. CHRIST: Your Honor, may I be heard brief.

THE COURT: Really brief, like a minute.

MR. CHRIST: Well, I just wanted to say, speaking for us, we are not going to be able to continue beyond today, assuming I find my car in Manhattan and get out of here, and I can't speak

for Mr. Yetnikoff, that we are able to do it.

Also Mr. Rothman's point that we take you on good faith that they are acting in our interests. If that's the case, on Mr. Wolfson's analysis, we can add some value to these four brand new contracts that have just come up. And the last point Mr. Wolfson said, I think we would be value added to the process. I talked to Sony in Tokyo twice, and I don't see anybody bringing in parties that might have substantial equity in interest. I know they are advertised, but I guess it's the difference between a realtor putting a multiple listing and going out and aggressively marketing it. And we certainly have incentive, and we are not conflicted, frankly, to find somebody to replace those insiders and sell that premium too.

THE COURT: Okay.

MR. CHRIST: Thank you, very much.

THE COURT: I unfortunately have to eat something, so I'm going to come back about 2:35.

Maybe Mr. Wolfson and Mr. Huebner can go to lunch together and work out their metaphors.

(Whereupon, a recess was taken for the purpose of luncheon.)

AFTERNOON SESSION

THE COURT: Please be seated. I have in front of me a motion, literally a renewed motion by a group of common shareholders who hold approximately 5 percent of the common stock of Loral. That motion has been joined in by another group of common shareholders who profess to own approximately 1 percent of the common stock, and has also be joined in by a group of preferred shareholders who own approximately 23 percent of the outstanding preferred shares. The motion seeks, again, the appointment of an official committee of equity security holders. I say again because I denied a motion by the same group on September 19th of this year.

The group of preferred shareholders had not formally sought the appointment of an official preferred shareholders committee from the U.S. Trustee, but we have all been entreated their request as -- at least a request for an official committee of equity security holders that is to be dominated by preferred shareholders, although at times they have also sought in the common shareholders said they would support an appointment

of two separate committees, one for preferred shareholders and one for common shareholders.

I think, as has been pointed out in oral arguments, these requests need to be looked at separately because they raise different issues, and that's what I'll do. But in sum, I'm going to deny each of the requests for the appointment of a committee for the following reasons: First, as is well established, the court reviews the U.S. Trustee's decision whether to appoint a committee or not to appoint a committee on a de novo basis, although I obviously note that when, as here, the U.S. Trustee has done a thorough analysis of the request in the first instance. I then turn to the statute which states in Section 1102(a), that the court may appoint an additional official committee of equity holders, if necessary, to assure adequate representation of that group.

As Judge Gropper pointed out in his opinion in the Kasper bankruptcy of this year, this statute, by focusing both on whether the appointment is necessary to assure adequate representation, sets a rather high threshold for the movant. Recognizing that threshold, the courts

have also found as set forth in the Johns-Manville case at 68(BR)155 Southern District of New York 1986, and other cases, that the determination by the bankruptcy court is based on the facts and circumstances of a particular case in the exercise of the court's discretion.

The courts, since there is no specific definition in the statute of adequate representation for purposes of 1102 entails, have applied a number of factors, some of which are met here, but the most important ones are not. Courts consider, among other things, the number of shareholders, the complexity of the case, and the timing of the request, and ultimately whether the cost of forming an official committee outweighs the concern for adequate representation.

Perhaps more pointedly, Colliers and the more recent cases have highlighted two key ways of looking at the issues. As Colliers says, the threshold situation is whether there is sufficient equity in the estate to justify the cost and expense of a separate committee. And Colliers also says at Section 1102.03, the key consideration is whether formation of an equity committee is more

likely to accelerate or to impede the reorganization process.

The threshold consideration, that is whether there is sufficient equity in the estate to justify the cost and expense of a separate committee is something we've spent considerable time on this morning and this afternoon, although it ultimately there's not an enormous amount of evidence in the record that goes to the value of the debtors and the value of the equity. I note that as set forth by Judge Cram in the Manville case, the movants have the burden of proof, and it is their burden to put on evidence establishing, among other things, whether there is real equity value here. And as Judge Lifland pointed out in the Williams Communications case, this didn't mean that the court should conduct a full valuation of the debtor, but rather should determine whether it appears reasonable that there is a substantial likelihood in Judge Lifland's words, of a meaningful distribution under the absolute priority rule, to equity holders.

And again, as pointed out by Judge Lifland, citing to the Emens Industry case, this is

because creditors and debtors should not bear the cost of negotiating what is, in essence, a gift to shareholders who are out of the money; whereas they should bear the costs, at least the debtors should bear the cost of shareholders negotiating a meaningful distribution.

Ultimately, as pointed out by numerous cases, the appointment of an equity committee is the exception rather than the rule. But again, as I said earlier, some of the factors suggesting that a committee should be appointed here are present, and therefore this requires some more attention than may have been suggested by some of the objectants.

First of all, there is no dispute that the common stock of Loral is very widely held by a number of shareholders who individually probably do not have the resources to pursue actively their rights in this Chapter 11 case. On the other hand, it appears to me that the preferred stock is held by a smaller group, and in particular, the group of moving preferred shareholders here has a sizable stake in the company and is a relatively small group of three

shareholders, holding approximately 23 percent, which, if one looks at the liquidation preference and accrued interest in respect of that preference, is a meaningful amount of money, over 50 million dollars. The timing of the appointment of a committee wouldn't be appropriate at this point, in that the debtors, having through their own auspicious in large part, stabilized their business and taken some key decisions in the case, are now focusing on a Chapter 11 plan preceded by a business plan, so that in fact, if it were appropriate, one could, at this point, have a committee that would be focusing on negotiation of a Chapter 11 plan.

However, based on my review of the presentation on valuation, I find that as far as the common shareholders are concerned, that negotiation would be largely academic. Based on both the book value of the debtors, from their publically filed SEC reporting, as well as the agreed upon range of trading prices, which were the only evidence of value offered by the movants, the common shareholders are substantially under water from anywhere between 230 million dollars on a high

end, to 620 or more on a low end, 620 million or more on a low end. As I noted at the hearing in September, both book valuations and trading valuations, that is security trading valuations have their weak elements. And it's been my experience that book valuation in a company like this is has often been overstated, whereas we all recognize that the trading valuations are far from accurate. However, when either method leaves to such a substantial negative equity, I think it is clear to me that the debtors are insolvent as far as the common shareholders are concerned.

Colliers states that it is clear that a committee should not be appointed if the debtor is hopelessly insolvent, and it is clear that it should be appointed if the debtor is clearly solvent, obviously leaving a middle ground there for courts to deal with in their discretion.

I find here that the gap is simply too large to justify the expense and disruption that an official committee of common shareholders would pose, given that the only trade off, I think, based on what's before me, the evidence before me, would be is di minimis recovery at this point, by

shareholders.

It's important to note that the only serious request for a committee here is based on the need to negotiate a plan. There's no meaningful evidence, or even contention, that management is somehow laying down on its job in running the company properly and obtaining the most value possible for the debtors. In fact, the reason for the renewal of the motion in its prosecution today, is just the contrary, that the company, its management has done an excellent job in increasing value. So, I'm really focusing on the one function of a committee, which is negotiating a plan. And again, based on today's record, I believe that those negotiations at this point would result in only a di minimis recovery for common shareholders; perhaps not in Judge Lifland's words "a gift," although, perhaps close to that.

I find that management is quite capable of negotiating that type of recovery for the shareholders, and I expect motivated to do so. I also find that the -- if I haven't made it clear already, the concerns that were raised in passing

by some of the shareholders, that management is hopelessly conflicted or somehow otherwise not properly conducting their fiduciary duties, has not been established. Far from it. I then look at, separately, at the request by the preferred shareholders for either a separate committee or a committee which they were dominant. The valuation issues with regard to the preferred shareholders are much more close. Although there were proved issues, I cannot say that the debtors are hopelessly insolvent when it comes to the preferred shareholders. In fact, it is possible that the preferred shareholders will have a meaningful return in this case, and not just a gift. On the other hand, it is possible that they are out of the money; and ultimately as I said before, they have the burden of proof upon the issues with respect to the appointment of an official committee.

However, whether or not a group of shareholders is in or out of the money is only one of the factors, albeit an important one, to be considered when a committee is sought to be appointed. One goes back on the statute which says that a committee may be appointed, if necessary, to

ensure adequate representation of the equity interest holders. And here it appears clear to me that with regard to the preferred holders, such appointment is far from necessary, in fact is not necessary at all. The preferred shareholders again before me, are a small group, institutional holders represented by a capable law firm. And they have, as I pointed out, a substantial recovery to fight for, and therefore a true incentive to pay a law firm and an expert witness to protect their interests.

I note also that the debtors' counsel has represented to the court and confirmed a conversation in which counsel represented to the counsel for the preferred shareholders here, that the debtors will negotiate with the preferred shareholders in a meaningful way, which includes providing, subject to confidentiality constraints, a copy of the debtors' business plan, and other meaningful information that could ensure that those negotiations proceed in good faith. Therefore, the statute put simply does not contemplate the appointment of a committee of preferred shareholders or a committee dominant by preferred

shareholders in these circumstances. The cost and harm to the estate, which is both direct in terms of dollars, as well as indirect in terms of dollars spent by other parties and potential delay outweigh the rather negligible benefits of additional representation, given my conclusion that the preferred holders have their own resources and their own reasons for protecting their interests actively in the case.

With regard to my question early on in this hearing as to whether one could limit the role of a committee to negotiating a plan, I appreciate Mr. Wolfson's candor, as well as Mr. Botter's remarks that in this case there are too many issues that arise that could be used as a means to affect the outcome of a plan. And my reading of Mr. Wolfson's answer is that his clients would prefer to maintain their flexibility with respect to those issues rather than coming in and literally sitting down and negotiating a distribution at the end of the case and have them come up to speed in the meantime. But ultimately, given my conclusion that the preferred shareholders are capable of representing themselves, that

colloquy was somewhat academic.

So, I'm denying the motions. I find that the facts have not changed so dramatically from the September 19th ruling to justify the appointment of a committee of common shareholders, and find that the preferred shareholders do not need a committee to ensure adequate representation, given the quality of their professionals and the amount that they have at stake in the case.

Ms. Fife, if you want to settle an order on three days notice then.

MS. FIFE: Yes, that would be fine, your Honor.

CERTIFICATE

STATE OF NEW YORK)
: ss.:
COUNTY OF WESTCHESTER)

I, Denise Nowak, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2003.

_____
DENISE NOWAK

Exhibit C

ORIGINAL 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
In the Matter

of

KASPER A.S.L., LTD., et al,

Debtors.
----------x

Case No.:
02-10497

July 15, 2003

United States Custom House
One Bowling Green
New York, New York 10004

motion by Triage shareholders for an order directing the appointment of an official committee of equity security holders; motion by debtors for authorization to amend employment agreements of Gregg I. Marks, Joseph B. Parsons, and Lee S. Sporn; motion by debtors for an order extending the time to assume or reject unexpired leases of nonresidential real property; objection by Taubman Auburn Hills Associates Limited
(calendar continued on next page)

B E F O R E:

THE HONORABLE ALLAN L. GROPPER, ESQ.,
United States Bankruptcy Judge

Calendar continued:

Partnership to the debtors' motion to extend time to assume or reject leases; joinder by Gryphon Master Fund, L.P., to the motion of Triage shareholders for an order directing the appointment of an official committee of equity security holders; objection of CPG Partners, L.P., to motion of debtors for an order extending the time to assume or reject unexpired leases of nonresidential real property; debtors' objection and response to motion of certain shareholders for order directing the appointment of an official committee of equity security holders; joinder of Lonestar Capital Management and affiliates for an order directing appointment of official committee of equity security holders; objection by official committee of unsecured creditors to the motion of Triage shareholders and Gryphon Master Fund, L.P., for order directing the appointment of an official committee of equity security holders; objection by the United States Trustee to motion of Triage shareholders for the appointment of an official committee of equity security holders.

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BY: CRAIG P. DRUEHL, ESQ.

With these people with their aggressive, energetic support. You have had it up to now, without their getting everything. You will have it in the future. But I think we should recognize they are the ones responsible in part -- in significant part for getting us where we are. We want them here to get us home.

JUDGE GROPPER: Thank you. I will take a five-minute recess and give you my rulings.

(Whereupon, a recess was taken.)

JUDGE GROPPER: Please be seated.

Here are my decisions on both motions.

With regard to the motion by Triage Management, LLC, and several of its affiliates to appoint an equity committee, I note the following:

The Triage affiliates collectively hold approximately 6 percent of the debtors' equity. Joinders in the motion have been filed by Lonestar Partners, which owns approximately 9.9 percent of the equity of the debtors by Gryphon Master Fund, LP,

which owns approximately 6 percent, and by JANA Partners, which also claims to be an equity owner. All of the foregoing entities asked the United States Trustee to appoint an equity committee in letters sent at various dates last May. The appointment of a separate committee was opposed before the U.S. Trustee by the debtors and by the Official Committee of Unsecured Creditors, and they similarly oppose such an appointment on this motion.

By letter dated June 11, 2003, the U.S. Trustee denied the request for the appointment of an equity committee.

Although the Court gives due consideration to the action of the trustee, it reviews the action of the U.S. Trustee de novo. See, In re Williams Communications Group, Inc., 281 B.R. 216 (Bankr. S.D.N.Y. 2002.); In re Enron Corp., 279 B.R. 671, 684 (Bankr. S.D.N.Y. 2002); In re McLean Industries, Inc., 70 B.R. 852, 856-57 (Bankr. S.D.N.Y 1987); In re Texaco, Inc., 79 B.R. 560, 566 (Bankr. S.B.N.Y. 1987); H.R. Rep. 99-764,

99th Cong., 2nd Sess. at 18 (1986).

We start with the words of the statute. Section 1102(a)(2) of the Bankruptcy Code provides in relevant part that, quote, "the Court may order appointment of additional committees of creditors or of equity holders if necessary to assure adequate representation of creditors or of equity holders," close quote. The first question thus is whether an additional separate committee is, quote, "necessary," close quote, to assure adequate representation. The operative word is "necessary," which implies a fairly restrictive standard, and certainly a standard which is higher than if the statute called for the appointment of a committee if, quote, "useful," close quote. The second operative term is, quote, "adequate representation," close quote, which directs the Court to consider the nature of the unrepresented or under represented group, the role of the group in the Chapter 11 case, and the functions that a committee

would presumably carry out. The burden is on the moving party to establish that a separate committee is required to provide adequate representation. In re Johns-Manville Corp. 68 B.R. 155, 158 (S.D.N.Y. 1986); accord Enron Corp., 279 B.R. at 685.

The determination is fact intensive with many courts focusing on the following three issues in connection with a motion for an equity committee: (i) the number of shareholders; (ii) the complexity of the case, and (iii) whether the cost of the additional committee significantly outweighs the concern for adequate representation. In re Johns-Manville Corp., 68 B.R. at 159; In re Wang, 149 B.R. at 2; In re Williams 281 B.R. at 220.

Other factors that have been considered by the courts are: (i) the timing of the motion relative to the status of the case, In re Kalvar Microfilm, Inc., 195 B.R. 599, 600 (Bankr. D.Del. 1996); (ii) potential to recover expenses pursuant to Section 503(b),

In re Hills Stores, 137 B.R. 4, 8 (Bankr. S.B.N.Y. 1992); (iii) motivation of the movants, In re Orfa Corp. of Philadelphia, 121 B.R. 294, 295, (Bankr. E.D.Pa. 1990); and (iv) the tasks an additional committee is to perform, McLean Industries 70 B.R. at 860.

This case presents the following fact pattern that does not appear to have been considered in a reported case. At the outset, it appeared that these debtors were hopelessly insolvent. It has been held in many cases that an equity committee is not, quote, "necessary to ensure adequate representation," close quote, where the debtors appear to be hopelessly insolvent. See, e.g., In re Emons Industries, 50 B.R. 692, 694 (Bankr. S.D.N.Y. 1985); In re Williams Communications, 281 B.R. at 220.

In cases at bar, however, the debtors' prospects have improved to the point that there may be value for equity. The debtors and the creditors' committee argue that it is not at all certain that there will be any

equity, and this argument is joined in by the U.S. Trustee. Both argue that this militate against an appointment of a committee. The real question is whether in these cases at this time, when it is not clear whether there will be any value for equity and, if so, what it will be, but there is a possibility, is a separate committee necessary to assure the equity holders adequate representation?

The answer, in light of the facts of this matter, is clearly "no." The best way to find out what an enterprise is worth is to sell it, preferably as a going concern. As the Supreme Court said in Bank of America v. 203 LaSalle Street Partnership, 526 U.S. 434, 457 (1999), quote, "the best way to determine value is exposure to a market," close quote.

The debtors have already put in place sales procedures that the Court has found appropriate to obtain the highest and best offer for the debtors. If there is more value for the equity than the initial bid

obtained from Kellwood Company, the sales procedure should smoke it out. There is not the slightest indication that the sales procedures are not fair or that the Kellwood so-called stalking horse bid is not a fair arm's length offer, untainted by an insider dealer. Testimony at the hearing of June 27, 2003, has contradicted Triage's early claims that the sale process improperly enriches management and therefore improperly incentivizes management to seek a sale, rather than a stand-alone plan.

Nevertheless, it is recognized that the equity holders may have a concern that the creditors' committee and the debtors stop negotiating with Kellwood when they covered the debt, or came close to covering it, and ignored the fact that equity might be the holder of the residual interest and was also entitled to have its interests or possible interests taken into account. In this case there is no indication that the debtors did, in fact, ignore their duties to the holders of the residual interest. Moreover, the

presence on the committee of two large creditors who were also large shareholders provides an indication, albeit slight, that the interests of equity were not ignored. But the real protection is that the debtors put themselves up for sale pursuant to fair procedures that are designed to obtain the highest value. If the Triage group or any other equity holders are convinced that there is more value in the equity, the equity can bid for it. See, In re Central Ice Cream Corp., 836 F.2d 1068, 1072, Fn. 3, (7th Cir. 1987). The equity does not need a committee to renegotiate sales procedures and possibly put the current sale and the interests of the debt and equity at more risk than is necessary. The Kellwood offer expires on November 30, 2003, and the debtors do not have a limitless period of time to effect a plan, especially in a business which, as we have seen in this case, can go down and can go up, and it certainly can change. This implicates a factor frequently used by the Courts in

considering a motion for an equity committee, whether it simply comes too late in the Chapter 11 process. See, generally In re Public Serv. Co. of New Hampshire, 89 B.R. 1014, 1018 (Bankr. D.N.H. 1988).

There is a second mechanism that protects the equity's interests here. The sale to Kellwood or another purchaser is not final until the debtors duly confirm a plan in accordance with all the requirements of Chapter 11. The equity will thus have ample opportunity to show, if they wish to so argue, that the debtors have not acted in good faith or that a stand-alone plan is required under the Code. There is no reason to believe that a committee would be necessary to participate in a contested confirmation hearing, if any. First, if Triage and its allies wish to contest confirmation, they obviously have the resources to do so. Moving shareholders of large, sophisticated institutions with the ability to represent themselves well and be heard is evidence by this motion and by

prior proceedings in these very cases. With regard to SEC concerns, the Court is willing to consider any reasonable protection that is within its power to allow the movants the ability to protect their legitimate interests in connection with these Chapter 11 cases. However, they have not demonstrated that these securities laws prohibit them from taking such steps or justify a committee under the facts of this case or, indeed, that the establishment of a committee provides any automatic immunity. It may, but informal committees are very common under Chapter 11. They are indirectly recognized by the bankruptcy rules, and the Court certainly will hear from the formal committee, if the committee wishes to be heard in that guise.

It is also noteworthy that a majority of the equity appears to be held by holders who have not objected and appears satisfied with the present status. To create an equity committee from a minority would also be a possible complication and could be

self-defeating. A committee would give a movant some additional leverage, but, as I said, if the group wishes to contest confirmation, the court will give it the same attention that it would give any similarly situated group.

Creation of a committee would, of course, provide the movants with a clearer path for the recovery of their costs than if they sought such costs under the substantial contribution test of 11 U.S.C. Section 503(b). If any informal committee of equity holders or the equity holder movants themselves make a, quote, "substantial contribution," end quote, they have a right to recovery of expenses under Section 503(b) of the Bankruptcy Code. In these cases where it is not certain that there will be value for equity, and in light of the other protections for equity, it would not be appropriate to risk imposing these costs on the creditor body at this stage of the case.

Finally, the debtors have made it clear

that they recognize their responsibility to equity holders. They have met and negotiated with representatives of movants and state that they are willing to do so. To form a committee at this late date would, however, imply that the debtors might also have to negotiate the plan, as negotiation of a plan is one of the principal responsibilities of a committee. This might well propel these cases a giant step backwards and endanger the progress that is ironically for genesis of this motion. Where procedures are in place to protect equity and there is no indication that their interests have been ignored and where they are well represented already, a separate committee is not quote, "necessary to assure their adequate representation," end quote. The motion is denied. The debtors shall settle an order on three days' notice.

With respect to the motion to approve changes to the compensation plans of three members of management, the debtors have shown three factors that support the motions

as appropriate under the structures of the Bankruptcy Code. First, these are changes for the benefit of the officers who have concededly done a superb job. This is not always the case in incentive plans that come before Bankruptcy Court. Second, these officers could have negotiated these changes earlier. If this is so, their best efforts are sill needed, and there is no cause for the debtors to be forced to treat them inequitably, because they tended to the needs of the company without negotiating their own benefits at as earliest a stage as possible. Third, and most important, there has been a showing that these officers would be entitled to more benefits under other scenarios and that the amendments are reasonable and fair to the debtors in terms of rationalizing the treatment of these officers in the event of any sale. It is clear that they are giving up some very valuable expectancies and rights, and there is no evidence that the costs of their rights as amended is disproportionate to the

amounts that are being given up and to the benefits from the continued services from these officers. The motion has been reviewed by the creditors' committee, which has no objection, and which the Court will assume believes as it says that the costs of the plan are coming out of the pockets of the creditors rather than the shareholders. In any event, whether the cost is, in fact, a cost of the creditors or the shareholders, under the Bankruptcy Code the debtors have made a sufficient showing that the amendments are reasonable and the motion will be approved. The debtors are also requested to settle an order on three days' notice. Thank you very much.

MR. MILLER: The order I settle will have the revised form of the employment agreements to broaden beyond Kellwood, as I indicated earlier. I will service a blackline copy so that the Triage shareholders will see the changes.

JUDGE GROPPER: Very good. Thank you.

C E R T I F I C A T E

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

I, DEBORAH HUNTSMAN, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That the within is a true and accurate transcript of the proceedings taken on the 15th day of July, 2003.

I further certify that I am not related by blood or marriage to any of the parties and that I am not interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of July, 2003.

Deborah Huntsman
DEBORAH HUNTSMAN

EXHIBIT E

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
DELPHI CORPORATION, et al.,	:	Case No. 05–44481 (RDD)
Debtors.	:	(Jointly Administered)

DECLARATION OF JOHN D. SHEEHAN IN SUPPORT OF DEBTORS' OBJECTION TO MOTION OF APPALOOSA MANAGEMENT L.P. PURSUANT TO 11 U.S.C. § 1102(a)(2) FOR ORDER DIRECTING UNITED STATES TRUSTEE TO APPOINT EQUITY COMMITTEE

John D. Sheehan declares as follows:

1. I make this declaration in support of the Debtors' Objection To Motion Of Appaloosa Management L.P. Pursuant To 11 U.S.C. § 1102(a)(2) For Order Directing United States Trustee To Appoint Equity Committee (the Debtors' "Objection" and Appaloosa's "Equity Committee Motion," respectively). Capitalized terms not otherwise defined in this declaration shall have the meanings ascribed to them in the Objection or the various pleadings referenced herein. I have personal knowledge of the matters stated in this declaration.

2. I am the Vice President of Corporate Restructuring, Chief Accounting Officer, and Controller for Delphi Corporation (which, with certain of its subsidiaries and affiliates, the debtors, and the debtors-in-possession in the above-captioned cases, are referred to collectively and variously herein as "Delphi" or the "Debtors"). I joined Delphi in July 2002 as Chief Accounting Officer and Controller. On March 4, 2005, I also assumed the position of acting Chief Financial Officer, a position that I held until October 8, 2005, when I was appointed Chief Restructuring Officer. Consequently, I am familiar with, and personally was involved in, the events and circumstances giving rise to the Debtors' decision to seek chapter 11 protection on October 8, 2005 (the "Petition Date"). Since the Petition Date, I have been involved at some level in virtually all of the significant decisions made by the Debtors in connection with these chapter 11 cases.

3. On or about November 7, 2005, Appaloosa submitted to the United States Trustee (the "Trustee") a letter seeking the appointment of an official equity committee (the "Letter Request"). A copy of the Letter Request, which Appaloosa forwarded inter alia to counsel for the Debtors, and to counsel for the Official Committee of Unsecured Creditors (the "Creditors' Committee"), is attached to this declaration as Exhibit 1.

4. Shortly after the Trustee received Appaloosa's Letter Request, the Trustee asked the Debtors for their position regarding Appaloosa's Request. On December 7, 2005, the Debtors and their advisors, including their legal and final advisors (Rothschild & Co.), discussed the Letter Request with the Debtors' Board of Directors, and on December 8, 2005, the Debtors discussed the Letter Request with the Creditors' Committee and its advisors. As a result of those discussions, and after careful consideration, the Debtors determined that the formation of an equity committee in these chapter 11 cases was unwarranted at that time, and they so informed the Trustee. A copy of the Debtors' December 19, 2005, letter response to the Trustee's request was attached to Appaloosa's Equity Committee Motion, as Exhibit A, and is attached hereto as Exhibit 2.

5. Attached as Exhibit 3 to this declaration are charts showing the historical trading price, current through February 21, 2006, of certain Delphi bonds and stock and Delphi's market capitalization. The first chart, captioned "Recent Debt Pricing," comes from information supplied by the commercial information supplier known as "LoanX," which is a commercial information provider of market quotations, tabulations, lists, directories, and other published compilations, generally used and relied upon by the public or by persons in the business of buying or selling corporate debt securities.[1] The second chart, captioned "Recent Stock Pricing and Market Capitalization," comes from CapitalIQ, which is a division of Standard and Poor's, a commercial

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[1] According to its website (www.bondmarkets.com), LoanX is an industry-sponsored platform that provides secondary market liquidity and transparency services to dealers and asset managers in the syndicated loan market. The company currently provides brokerage services to the dealer community, posting the inside markets and facilitating trade activity on as many as 50 different issues at any time. LoanX launched an Internet-enabled mark-to-market service in May 2002. This new service marries dealer marks and known facility details, and integrates this market data with analytical tools and real-time credit market news from multiple vendors.

information provider of market quotations, tabulations, lists, directories, and other published compilations, generally used and relied upon by the public or by persons in the business of buying or selling corporate equity securities.

6. According to information supplied by LoanX, as of February 21, 2006, all four tranches of Delphi Corporation's publicly-traded debt securities were trading at an implied recovery of between 53.0% and 55.8% of face value. Also as of February 21, 2006, Delphi's publicly-traded trust preferred securities were trading at an implied recovery of 24.0% of face value. According to information supplied by CapitalIQ, as of the close of the business day on February 23, 2006, Delphi's common stock was trading at $0.33.

7. The Debtors' schedules and statements, as amended (Docket Nos. 1854 and 1999), the Debtors' monthly operating report for January 2005, filed on February 28, 2006 (Docket No. 2569), and the recent trading prices of Delphi's public securities described in the paragraphs 4 &5 and Exhibit 3 hereto, all evidence the fact that equity is deep under water.

8. Delphi Corporation's Board of Directors has twelve members, 10 of whom are independent, and two of those ten were elected to the Board within the past month.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing statements are true and correct.

Executed on March 1, 2006, in New York, New York.

/s/ John D. Sheehan
John D. Sheehan

Exhibit A

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November 7, 2005

SENT VIA FACSIMILE TRANSMISSION

Alicia M. Leonhard, Esq.
Tracy H. Davis, Esq.
Office of the United States Trustee
for the Southern District of New York
33 Whitehall Street, 21st Floor
New York, New York 10004

Re: In re Delphi Corporation, et al., 05-44481(RDD)
(Jointly Administered)

Attorneys Leonhard and Davis:

We represent Appaloosa Management L.P. ("Appaloosa"), which, collectively with certain of its affiliates, is one of Delphi Corporation's ("Delphi") largest shareholders, owning approximately 9.3% of Delphi's issued and outstanding shares.

For the reasons set forth below, Appaloosa believes that the appointment of an official committee is required to provide adequate and appropriate representation of the interests of all shareholders of Delphi and to ensure that they receive the value to which they are entitled under the chapter 11 process. Accordingly, we hereby request the appointment of an official committee of equity security holders (an "Equity Committee") in the chapter 11 cases of Delphi and its affiliated debtors and debtors in possession (collectively, the "Debtors").

According to the Affidavit of Robert S. Miller Jr. under Local Bankruptcy Rule 1007-2 and in support of Chapter 11 Petitions and Various First Day Applications and Motions dated October 8, 2005 (the "Miller Affidavit"), the Debtors estimated that there were 331,202 shareholders as of August 26, 2005. According to the Miller Affidavit, the Company has 1.35 billion shares of

Alicia M. Leonhard, Esq.
Tracy H. Davis, Esq.

November 7, 2005

authorized common stock and of this amount 561,781,590 shares were outstanding as of August 26, 2005.

The Relevant Criteria for Establishing
an Equity Committee are Satisfied Here

We believe all of the criteria for the appointment of an Equity Committee under 11 U.S.C. § 1102(a)(1) are present in this matter:

(a) the interests of shareholders are not otherwise adequately represented;

(b) Delphi is not hopelessly insolvent, such that Appaloosa appears to have a real economic interest at stake;

(c) the case is large and complex;

(d) the stock is widely held and actively traded; and

(e) the timing of the request is appropriate.

See generally In re Williams Commc'ns Group, Inc., 281 B.R. 216 (Bankr. S.D.N.Y. 2002); In re Johns-Manville Corp., 68 B.R. 155 (S.D.N.Y. 1986); In re Kalvar Microfilm, 195 B.R. 599 (Bankr. D. Del. 1996); In re Wang Labs., Inc., 149 B.R. 1 (Bankr. D. Mass. 1992) (appointing equity committee over objections of United States Trustee and official committee of unsecured creditors even while debtor had negative book equity of several hundred million dollars); In re Baker Indus. Corp., 55 B.R. 945 (Bankr. S.D.N.Y. 1985) (equity committee appointed); In re Evans Prods. Co., 58 B.R. 572 (S.D. Fla. 1985); In re Emons Indus., Inc., 50 B.R. 692 (Bankr. S.D.N.Y. 1985); In re Exide Technologies, Case No. 02-11125 (Bankr. D. Del. 2002) (appointing equity committee over objections of debtor and official committee of unsecured creditors).

Equity Will Not is Adequately
Represented without an Official Committee.

Although the unsecured creditors and shareholders possess a general identity of interest in seeing that the unsecured creditors are paid because of the "absolute priority" rule's mandate that junior interests retain nothing unless senior debt is paid in full, see 11 U.S.C. § 1129(b)(2)(B), such interests are not always aligned and often diverge. Furthermore, the official committee of unsecured creditors (the "Creditors' Committee") has neither a duty nor incentive in these cases to choose strategic alternatives that maximize value for equity. In fact, these Debtors are organized with substantial non-debtor affiliates under a complex corporate structure. From a review of publicly available information, it appears that substantial unencumbered assets or assets with substantial residual value exist within legal entities with relatively little debt,

particularly with respect to the company's foreign and emerging new operations. In contrast, the major liabilities contributing to the deterioration of the company's recent financial performance, namely, unsustainable U.S. employee related legacy obligations, are in respect of operations isolated within certain U.S. Debtor subsidiaries, which have no claims against or rights of distribution from other valuable Delphi businesses. While we recognize that these Debtors have substantial obligations that need to be addressed in the context of these bankruptcy cases, there remains substantial value within Delphi's capital structure outside of and unrelated to the Debtors' legacy obligations. Thus, due to the complex legal structure, not only is the total amount of liabilities within the Delphi enterprise an important fact to ascertain, but where such liabilities appropriately reside within the capital structure must be thoroughly explored as well. Simply, ensuring that creditors are satisfied only from the estates against which they have legal entitlements is paramount to protecting the rights of equity shareholders – a function that may be performed only by a body charged with the fiduciary duty to advance the interests of such shareholders. Clearly, the interests represented by the Creditors' Committee conflict with the interests of shareholders on these points.

Further, while Delphi's directors and managers have a fiduciary responsibility to look after shareholders' interests, conflicting concerns often arise which make it difficult for such directors and management to follow the best course for non-insider public shareholders. Accordingly, the shareholders are the only major constituency not independently represented at this time. The shareholders are entitled to an official role in these cases to advance and preserve equity value, equity that a few days before the Delphi filing had a market value in excess of $1.7 billion. Shareholder exclusion without official representation will hamper their ability to effectively participate in the chapter 11 cases and ultimate plan formulation. An Equity Committee should be appointed to enable shareholders to participate fully and actively in these cases.

Delphi Corporation is not Hopelessly Insolvent.

These are not the typical chapter 11 cases where equity should be presumed to be out of the money. In fact, the opposite needs to be presumed here, that is, equity is in the money and therefore entitled to have meaningful participation in these cases. Indeed, the actions of Delphi itself shortly before the commencement of these cases require a presumption that Delphi is solvent. As recently as June 22, 2005, Delphi declared a $0.015 dividend on Delphi $0.01 par value common stock. This dividend was paid on August 2, 2005. Under Delaware law, however, dividends may be declared *and* paid only (i) out of surplus or (ii) in the case where no surplus exists, out of the company's profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. Del. Cod. Ann. Tit. 8, § 170 (2003). As Delphi has not reported any profits in the current and preceding years, payment of the August 2, 2005 dividend must have been from Delphi's surplus. Surplus is defined as the excess of the net assets (total assets minus total liabilities) of the corporation over its capital, which, if determined to be available, necessarily requires a determination that the corporation is balance sheet solvent. Id. at § 154. Thus, as of August 2, 2005, just two months prior to Delphi's filing, Delphi's board of directors had determined that it was balance sheet solvent. See also, In re Heilig Meyers

Company, 329 B.R. 471 (Bankr. E.D. Va. 2005) (court considered debtor's payment of dividend as factor in determining solvency of debtor as payment of dividend while insolvent violated Virginia law).

Perhaps more importantly, Delphi's Chief Executive Officer has stated clearly that the Debtors commenced their chapter 11 cases simply to avoid a potential filing under the Bankruptcy Act of 2005 that came into effect on October 17, 2005. In particular, he indicated that he did not want Delphi to be the "guinea pig" under the new, less debtor friendly law. See The Sunday Times (UK), September 18, 2005, at 65, available at 2005 WLNR 14706425. There were, however, no reports of any impending liquidity crisis or any other matters compelling a filing. In fact, the expectation was that Delphi, along with General Motors, would continue to negotiate with their respective union employees and reach a consensual agreement or agreements outside of chapter 11. Recently, however, there have been reports that General Motors urged Delphi to commence chapter 11 proceedings to gain a strategic advantage in its negotiations with its own union employees. See Economist, October 15, 2005, at 65, available at 2005 WLNR 16692334. Thus, unlike other recent large chapter 11 cases commenced on the eve of the effectiveness of the new bankruptcy amendments, a chapter 11 filing for Delphi was not inevitable (and it could not have been inevitable, otherwise Delphi's board of directors could not have declared a dividend just two months prior). Simply, Delphi is in chapter 11 today and shareholders are disenfranchised not because Delphi is insolvent or unable to pay its obligations as they come due; Delphi is in chapter 11 solely because it made a calculated determination, perhaps at the urging of its self proclaimed largest creditor, that the current legal construct offered certain benefits that would otherwise soon be unavailable.

Moreover, the value of Delphi's current equity will depend in large part on the resolution of material issues currently being addressed by the Debtors without meaningful participation from shareholders, including:

(a) the total amount of actual employee related liabilities and where such liabilities reside in the capital structure;

(b) the manner in which employee related liabilities are restructured, including pursuant to sections 1113 & 1114 of the Bankruptcy Code;

(c) the amount, enforceability, treatment and appropriate characterization of any claims asserted by General Motors, including claims, if any, asserted pursuant to the Indemnification Agreement, dated December 22, 1999, between Delphi and General Motors;

(d) the extent to which Delphi may mitigate or avoid the accrual of any enforceable claims to General Motors under the Indemnification Agreement; and

(e) whether intercompany claims exist in favor of Delphi Corporation for, among other things, the advancement of substantial funds raised in the capital markets for the purpose of addressing certain Debtor legacy obligations.

For instance, under the Indemnification Agreement, if enforceable, Delphi must indemnify General Motors for any liabilities it incurs under those certain Benefit Guarantees issued by General Motors to certain of the Debtors' employees. Once accrued, the Benefit Guarantees require General Motors to continue to pay employee obligations notwithstanding the expiration of the Debtors' own underlying responsibility to pay such obligations. General Motors may assert, although Appaloosa would contest such interpretation, that the Indemnification Agreement requires Delphi to reimburse General Motors for all obligations incurred, even if the Debtors have been relieved of the underlying obligations owing directly to the employees. If not otherwise triggered, however, the Benefit Guarantees and Delphi's obligations, if any, under the Indemnification Agreement, terminate in 2007. Accordingly, before taking any actions that may trigger accrual of obligations owing under the Indemnification Agreement, Delphi must explore all alternatives with consideration given to the consequences any actions may have on shareholder value. Delphi has already begun the process of restructuring its employee obligations. Although Appaloosa does not dispute that such obligations need to be restructured, disturbingly, there is no evidence in the public record that Delphi has given any consideration to how the manner in which it does so affects shareholder value.

These factors combined make it clear that Delphi is far from hopelessly insolvent, and shareholders have a real economic interest at stake in these cases.

These Cases are Large and Complex

According to the Debtors' petitions and the Miller Affidavit, the Debtors and their non-debtor subsidiaries and affiliates collectively possess $17.1 billion in total assets and $22.1 billion in total liabilities. $10.4 billion of the stated liabilities are actuarial estimates of future employee obligations, which obligations are subject to substantial reduction. In addition, as set forth in the Miller Affidavit, the Debtors are arguably the single largest global supplier of vehicle electronics, transportation components, integrated systems and modules, and other electronic technology. The Debtors' technologies are present in more than 75 million vehicles on the road worldwide. The Debtors and their affiliates employ more than 180,000 employees worldwide, with global 2004 revenues of approximately $28.6 billion and global assets as of August 31, 2005 of approximately $17.1 billion. By their own admission, the Debtors' bankruptcy ranks as the fifth largest public company chapter 11 in terms of revenues, the thirteenth largest public company business reorganization in terms of assets, and represents the second largest bankruptcy filing in 2005. The vast size and complexity of these cases is therefore not in question.

The Stock is Widely Held and Actively Traded.

As of August 26, 2005, Delphi had more than 561,781,590 million shares of common stock outstanding and 331,202 shareholders. As of the close of business on November 4, 2005, over 4.5 million shares of Delphi were traded, closing at approximately $0.39 per share with a market capitalization of nearly $217 million. The average daily trading volume over the past three months was nearly 22 million shares. On October 4, 2005, just a few days before the bankruptcy filing, Delphi's market capitalization was approximately $1.7 billion.

While the depth and breadth of ownership of Delphi equity securities does not guarantee necessarily that Delphi shareholders are entitled to a distribution under a restructuring plan, the active trading in the stock, its market capitalization, and the large number of holders and potential beneficial holders does heavily weigh in favor of the appointment of an Equity Committee.

This Request Comes on a Timely Basis.

The Debtors only commenced these cases on October 8, 2005. Accordingly Appaloosa's request is timely. More importantly, as shareholder value may likely depend upon the manner in which the Debtors restructure their employee related obligations, as noted above, time is of the essence.

Appaloosa is mindful of concerns regarding the additional expense associated with the formation of an Equity Committee, but "[c]ost alone cannot, and should not, deprive . . . security holders of representation." In re McLean Indus., Inc., 70 B.R. 852, 860 (Bankr. S.D.N.Y. 1987). The Bankruptcy Code contains adequate means for controlling costs. See 11 U.S.C. § 330(a)(1). In a case of this magnitude where assets exceed $17 billion and net sales are over $26 billion, the benefits of committee representation of shareholders' interests far outweigh any additional costs to the Debtors' estates.

In sum, the Debtors have commenced one of the largest bankruptcies in American history. In the span of a few days prior to the Delphi filing, more than $1.5 billion of the market value of Delphi equity evaporated. The filing, on the verge of the Bankruptcy Reform Act of 2005, will affect, at a minimum, hundreds of thousands of beneficial holders of equity. Because of the sheer size of the bankruptcy, it has sent shockwaves throughout the automotive industry and unionized labor. One analyst has compared the Delphi bankruptcy to the former Chrysler Corp.'s brush with bankruptcy in the early 1980s -- only bigger. "I see this as a bigger event than if Chrysler had filed," said Glenn Reynolds, an analyst with the New York research firm CreditSights. "This affects the 800-pound gorilla -- GM. It's probably the biggest event in the auto industry in 25 years."

Accordingly, Appaloosa believes it would be grossly unjust to permit the Debtors to engage in the process of developing a business plan, including negotiations in respect of its employee related obligations, and formulating an exit strategy without any meaningful input from

shareholders who clearly have a large and valuable stake in the Debtors' enterprise. For the foregoing reasons, we respectfully request that you appoint an Equity Committee at your earliest possible opportunity.[1]

Very truly yours,

Thomas E Lauria

cc: Ronald Goldstein
David Tepper
John Wm. Butler
Robert J. Rosenberg

[1] Nothing contained herein shall constitute an admission or a waiver of any rights or remedies by Appaloosa, all such rights and remedies being expressly reserved.

Exhibit B

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VIENNA

December 19, 2005

Alicia M. Leonhard, Esq.
Trial Attorney
U.S. Department of Justice
Office of the United States Trustee
Region 2/Southern District of New York
33 Whitehall Street, Suite 2100
New York, New York 10004

Re: Request for Formation of Statutory Equity Committee in *In re Delphi Corporation, et al.*, Lead Case No. 05-44481 (RDD) (Jointly Administered)

Dear Alicia:

We are writing on behalf of Delphi Corporation and its affiliated debtors and debtors-in-possession (the "Debtors") to respond to a letter dated November 7, 2005, from White & Case LLP, submitted on behalf of its client, Appaloosa Management L.P. ("Appaloosa"), requesting that the United States Trustee for Region 2 (the "UST") exercise her discretionary authority under Section 1102(a)(1) of the Bankruptcy Code to form an official statutory committee of equityholders in the Debtor's chapter 11 cases. We have reviewed the November 7 letter with the Board of Directors and executive management of the Debtors, as well as with the Debtors' Official Committee of Unsecured Creditors (the "Creditors' Committee"), and we appreciate the opportunity to share with you the Debtors' position regarding Appaloosa's request to form a statutory equity committee.*

* A copy of this response will be filed on Form 8-K with the Securities and Exchange Commission.

In summary, the Debtors request that the UST determine that it is premature to appoint an equity committee at this time and defer further consideration of the request at least until the Debtors file their statements of financial affairs and schedules of assets and liabilities in January, 2006 and the UST has completed her conduct of the formal meeting of creditors required by Section 341 of the Bankruptcy Code (which is presently scheduled to take place in February, 2006). Should your office determine that a binding decision is required to be made at this early point in the Debtors' chapter 11 cases – even before the Debtors' first monthly operating report is filed later this month – the Debtors respectfully request that the UST decline to exercise her statutory prerogative to form an equity committee.

As is discussed in greater detail below, official equity committees are rarely appointed in chapter 11 cases, Delphi's Board of Directors (10 of the 12 of which are independent directors) will adequately represent all stakeholders in their role to maximize the enterprise value of the Debtors, and it is highly unlikely that common equityholders will receive any value in the chapter 11 cases on account of the equity securities of Delphi Corporation, the parent holding company, which interests the Debtors believe are "hopelessly insolvent." This observation is in stark contrast with the value of Delphi's non-U.S. subsidiaries, which are not chapter 11 debtors, are continuing their business operations in the ordinary course of business without supervision from the Bankruptcy Court, and are not subject to the chapter 11 requirements of the U.S. Bankruptcy Code. Notwithstanding the inherent value that the Debtors believe is associated with Delphi's global business operations outside of the United States, the Debtors do not believe that such value can overcome the direct and indirect claims against the parent holding company on account of the non-competitive legacy liabilities and burdensome restrictions under current U.S. labor agreements as well as the realignment of Delphi's global product portfolio and manufacturing footprint that must be achieved to preserve the Debtors' core businesses.

Background

On October 8, 2005, Delphi Corporation and certain of its U.S. subsidiaries filed chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). We refer you to the Affidavit of Robert S. Miller, Jr. filed in support of the First Day Motions in the

Debtors' chapter 11 cases (Docket No. 7) for general background regarding the Debtors' prepetition affairs and events leading up to the commencement of the chapter 11 cases. Also on October 8, 2005, the Debtors issued a press release reporting on the commencement of the chapter 11 cases which included the following cautionary paragraph:

> "Delphi also noted that the execution of its transformation plan through the chapter 11 process may give rise to the incurrence of additional prepetition claims as collective bargaining agreements, executory contracts, retiree health benefits and pension plans, and other liabilities of the company are addressed and resolved to maximize stakeholder value going forward. There is no assurance as to what values, if any, will be ascribed in the chapter 11 cases as to the value of Delphi's existing common stock and/or any other equity securities. Accordingly, the company urges that the appropriate caution be exercised with respect to existing and future investments in any of these securities as the value and prospects are highly speculative."*

On or about November 7, 2005, without prior substantive discussion with the Debtors, White & Case LLP delivered to the undersigned a copy of the November 7 letter to the UST. On November 28, 2005, White & Case LLP delivered to the undersigned a letter of even date from Appaloosa addressed to the Debtors' Board of Directors. (See Exhibit 1.) The November 7 and November 28 letters were discussed with the Board of Directors and the subject of a potential equity committee was discussed with the Creditors' Committee at meetings in Troy, Michigan on December 7 and December 9, respectively. On December 13, the Debtors were informed by the Creditors'

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* Additional cautionary language has been included in the safe harbor statement used in the company's subsequent restructuring-related press releases cautioning current stakeholders and potential investors that "[n]o assurance can be given as to what values, if any, will be ascribed in the bankruptcy proceedings to each of these constituencies [the Company's various prepetition liabilities, common stock and/or other equity securities]. Accordingly, the Company urges that the appropriate caution be exercised with respect to existing and future investments in any of these liabilities and/or securities."

Committee that the Creditors' Committee had voted to oppose the formation of an equity committee and had submitted its December 12 letter to your office.*

Request for Formation of Equity Committee

As summarized above, the Debtors respectfully request that you determine not to exercise your statutory prerogative to appoint an equity committee at this time. At best, appointment of an equity committee would be premature and, at worst, futile and an unnecessary burden to the Debtors' estates and its reorganization prospects.

Among the factors that are examined by the United States Trustee when considering the appointment of a statutory equity committee are whether the Company's shares are widely held and publicly traded; the size and complexity of the chapter 11 cases; the delay and additional cost that would result if an equity committee were appointed; the likelihood of whether the debtor is insolvent; the timing of the request relative to the status of the chapter 11 cases; and whether the interests are otherwise adequately represented. In re Kalvar Microfilm, Inc., 195 B.R. 599, 600 (Bankr. D. Del. 1996).

The Debtors believe that the reported decision of Judge Lifland in the Bankruptcy Court rendered on July 24, 2002 in In re Williams Communs. Group, Inc., 281 B.R. 216 (Bankr. S.D.N.Y. 2002) provides helpful guidance to the UST in this District. Among many of the salient conclusions reached by Judge Lifland that have applicability to the request here is Judge Lifland's penultimate conclusion:

> "The appointment of official equity committees should be the rare exception. Such committees should not be appointed unless equity holders establish that (i) there is a substantial likelihood that they will receive a meaningful distribution in the case under a strict application of the absolute priority rule, and (ii) they are unable to represent their interests in the bankruptcy case without an official committee. The second factor is critical because, in

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* While not agreeing with every statement in the Creditors' Committee submission, the Debtors concur with the Creditors' Committee conclusion that the appointment of an equity committee is not warranted in the Debtors' chapter 11 cases.

> most cases, even those equity holders who do expect a distribution in the case can adequately represent their interest without an official committee and can seek compensation if they make a substantial contribution in the case." (Id., at p. 222).

While the Debtors would fervently wish otherwise, Appaloosa has not demonstrated – and the Debtors cannot construct – a scenario in which these factors can be satisfied. This is largely because the claims associated with the Debtors' non-competitive U.S. legacy liabilities and burdensome U.S. labor agreements are direct claims against the U.S. parent holding company and are superior in priority to the interests of that entity's common shareholders.

The conclusion that there is no meaningful distribution available for the common shareholders of the U.S. parent holding company is also shared by the capital markets. As shown in the attached capitalization summary, all four tranches of Delphi Corporation's publicly traded debt securities were trading as of December 16, 2005 at an implied recovery of between 49.8% and 51.0% of face value and Delphi Corporation's publicly traded trust preferred securities were trading at an implied recovery of 23.0% of face value. (See Exhibit 2.) Applying the absolute priority rule, there can be no recovery for interests when claims are not satisfied at full value. The capitalization summary also reflects that the balance sheet account for shareholders' equity as of September 30, 2005 reflected a deficit of $5.314 billion and that the common stock was trading on December 16, 2006 at $0.35, which the Debtors believe reflects a combination of option value and market inefficiencies.

Accordingly, based on all of the relevant information available to the Debtors, the Debtors believe that if the Bankruptcy Court were required to make a determination today, there is a substantial likelihood that the Bankruptcy Court would determine that the Debtors are not solvent and meet the "appearance of hopeless insolvency" standard developed in applicable case law. The Debtors further believe that the Bankruptcy Court would therefore also conclude that any plan of reorganization capable of confirmation in accordance with the statutory priority rules of the Bankruptcy Code would result in holders of Delphi's common stock receiving no distribution on account of

their interests and cancellation of their interests.* With respect to the issue of adequate representation, the Debtors believe that the Board of Directors, which is presently composed of twelve members (ten of which are independent directors including two new directors elected to the Board earlier this month), adequately represents its stakeholders in its fiduciary mission in the chapter 11 cases to maximize business enterprise value for all of the Debtors' stakeholders.

Moreover, Williams requires that, as a prerequisite to the formation of a statutory equity committee, equity holders must first establish that "they are unable to represent their interests in the bankruptcy case without an official committee. . . .[this] factor is critical because, in most cases, even those equity holders who do expect a distribution in the case can adequately represent their interest without an official committee and can seek compensation if they make a substantial contribution in the case." (Id., at p. 222). This is particularly true here where Appaloosa is a highly sophisticated entity that has only recently invested in the Company at levels requiring public disclosure and has retained highly sophisticated professionals to represent it in the Debtors' chapter 11 cases.

While the Debtors believe that the above two issues should be dispositive of the request pending before the United States Trustee, the Debtors also believe that the request does not satisfy many of the other factors traditionally relied upon by United States Trustees and the Bankruptcy Courts that have been called upon to review such requests. For example, the Debtors

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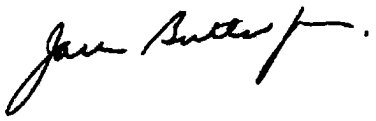
* The safe harbor and risk factors language in the Company's Form 8-K filed in connection with this response and future restructuring related press releases will include the following language: "As described in the Company's public statements in response to the request submitted to the United States Trustee for the appointment of a statutory equity committee, holders of Delphi's common stock and other equity interests (such as options) should assume that they will not receive value as part of a plan of reorganization. In addition, under certain conditions specified in the Bankruptcy Code, a plan of reorganization may be confirmed notwithstanding its rejection by an impaired class of creditors or equity holders and notwithstanding the fact that equity holders do not receive or retain property on account of their equity interests under the plan. In light of the foregoing and as stated in its October 8, 2005 press release announcing the filing of its chapter 11 reorganization cases, the Company considers the value of the common stock to be highly speculative and cautions equity holders that the stock may ultimately be determined to have no value. Accordingly, the Company urges that appropriate caution be exercised with respect to existing and future investments in Delphi's common stock or other equity interests or any claims relating to prepetition liabilities."

are very concerned about the additional costs and burdens that will be placed on the Debtors' estates by the appointment of a statutory equity committee. Similarly, the Debtors reserve their rights in all respects with respect to various statements and suggestions in the November 7 and November 28 letters from or on behalf of Appaloosa. The determination of the Debtors not to specifically address each and every statement in the November 7 and November 28 letters is not an admission against interest or an agreement with such statements, at least some of which the Debtors believe are materially inaccurate.

In closing, on behalf of the Debtors, we want to again express our appreciation for your willingness to consider input from the Debtors with respect to this request for appointment of an additional statutory committee in the Debtors' chapter 11 cases as well as for your patience while the Debtors considered this matter both internally as a matter of prudent corporate governance and with the Creditors' Committee. Should you have any questions regarding these matters or would like further information from the Debtors, we would be happy to make ourselves available at your convenience.

Sincerely yours,



John Wm. Butler, Jr.

Attachments

cc: Mr. Robert S. Miller
David M. Sherbin, Esq.
Thomas E. Lauria, Esq.
Robert J. Rosenberg, Esq.

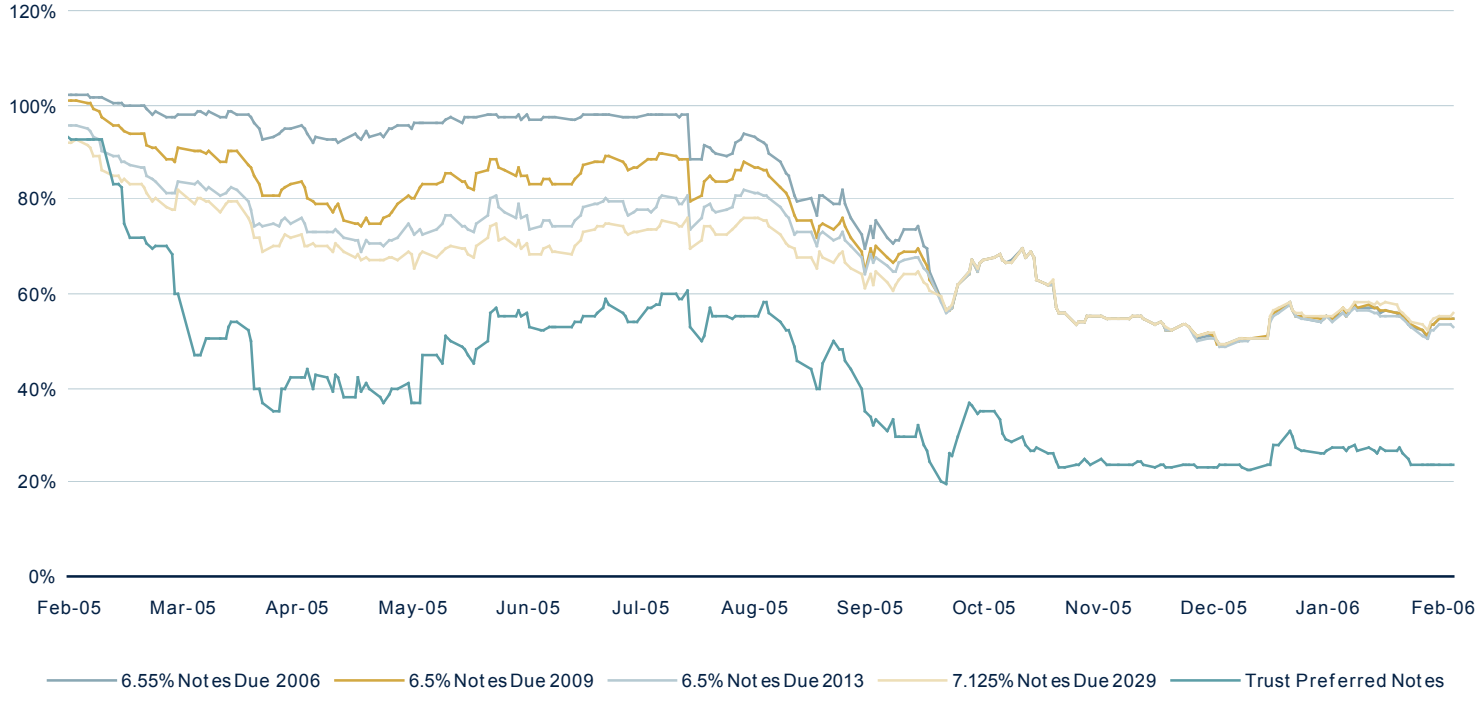
Exhibit C

243775

Delphi Corporation

Recent debt pricing

One year historical pricing



Source **LoanX** 2/21/06

243775

Delphi Corporation

Recent stock pricing and market capitalization

One year stock price

One year market capitalization ($ in millions)

Source **CapitalIQ** 2/21/06

EXHIBIT F

Hearing Date: March 9, 2006
Hearing Time: 10:00 a.m. (Prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
DELPHI CORPORATION, et al.,	:	Case No. 05-44481 (RDD)
	:	(Jointly Administered)
Debtors.	:	

DEBTORS' STATEMENT IN RESPONSE TO MOTION DIRECTING APPOINTMENT OF GENERAL MOTORS CORPORATION TO STATUTORY CREDITORS' COMMITTEE

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates (the "Affiliate Debtors"), debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby submit this statement (the "Statement") in response to the Motion For Order Directing Appointment Of General Motors Corporation to Statutory Creditors' Committee (the "Motion") filed on February 17, 2006 by General Motors Corporation ("GM"). The Debtors respectfully represent as follows:

1. When these cases were initially filed, Delphi did not support General Motors' request for appointment to the Creditors' Committee because of GM's relationship to Delphi as its former parent and largest customer, the legacy contractual agreements between the two companies, and the unique role that GM was expected to play in the resolution of Delphi's legacy obligations in its North American operations. After their chapter 11 filings, the Debtors have engaged in extensive and ongoing discussions with GM about labor and supplier issues and other matters of common concern, and although no final agreements have been reached, progress has been made.[1] Delphi also has not participated in, and neither supported nor opposed, GM's subsequent informal efforts to be added to the Creditors' Committee. Accordingly, the Debtors take no position on the merits of the Motion, which raises disagreements with the United States Trustee and primarily intercreditor issues with other stakeholders that are more appropriately addressed by the United States Trustee and the Creditors' Committee.

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[1] For example, in October 2005, GM estimated that its contingent liability relating to benefit guarantees for certain Delphi employees ranged from zero to $12 billion. In a January 26, 2006 press release, GM revised its estimate and now acknowledges that the liability will range from $3.6 billion to $12 billion.

2. However, while the Debtors are neutral with respect to the relief sought in the Motion, the Debtors affirmatively dispute many of the assertions, statements, and characterizations contained in the Motion including the subject matter highlighted below. In that regard, the Debtors fully reserve all of their rights with respect to all such factual and legal assertions, substantially all of which are superfluous and irrelevant to the relief sought in the Motion. Moreover, the Debtors request that any Order entered in connection with the Motion specifically recognize the Debtors' reservation of rights and refrain from making any findings of fact or conclusions of law with respect to such assertions.

3. As a threshold matter, the Debtors disagree with GM's suggestion that the process that the U.S. Trustee employed in selecting the members of the Committee was arbitrary and capricious or that she otherwise "abused" her discretion. The Debtors also reserve all their rights with respect to all of GM's Prepetition Claims (as that term is defined in the Motion) and should not be viewed as agreeing with GM's statements about them.

4. In addition, GM makes a number of superfluous and irrelevant statements regarding its supply arrangements and contractual agreements with the Debtors. See, e.g., Motion ¶ 6. Because none of these statements is particularly relevant to the merits of the Motion, the Debtors will not address GM's assertions here.[2] Finally, although this Statement in response to the Motion is not the occasion to brief the merits of whatever motions to reject executory contracts or leases with GM that circumstances may

[2] As discussed in paragraph 2 of this Statement, the Debtors specifically reserve their rights with regard to all issues relating to GM including their contractual relations with GM.

require the Debtors to file, GM's assertion, in a footnote, that Delphi will never be entitled to reject any GM contracts, including purchase orders between GM and Delphi (see Motion ¶ 11 n. 3), is plainly wrong.[3]

Dated: New York, New York
March 2, 2006

Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

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[3] Section 365(a) authorizes the Debtors to review their inventory of executory contracts and decide "which ones would be beneficial to adhere to and which ones would be beneficial to reject." Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993). The Debtors intend to exercise that authority and to make an informed business judgment about rejecting executory contracts, be they with GM or anyone else. See In re The Penn Traffic Co., 322 B.R. 63, 68 (Bankr. S.D.N.Y. 2005) ("It is well established that the decision whether to assume or reject an executory contract under Section 365(a) is a matter of business judgment to be exercised in the best interests of the debtor in possession and its creditors."). The Debtors' agnosticism about GM's present Motion should not be taken to presage their future beliefs about rejecting GM contracts or about the terms and conditions they will require in GM contracts succeeding those that have expired or that are rejected.